TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1926

No. [redacted] 166

[redacted]

JAMES [redacted] HODGSON, APPELLANT,

vs.

FEDERAL OIL AND DEVELOPMENT COMPANY AND THE MOUNTAIN AND GULF OIL COMPANY

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

FILED [redacted], 1926

([redacted])

(31,319)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 596

JAMES M. HODGSON, APPELLANT,

vs.

FEDERAL OIL AND DEVELOPMENT COMPANY AND THE MOUNTAIN AND GULF OIL COMPANY

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 23, 1925

Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, 1924, of said Court, before the Honorable Kimbrough Stone, Circuit Judge, and the Honorable Thomas C. Munger and the Honorable Andrew Miller, District Judges.

Attest:

(Seal) E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the twenty-sixth day of July, A. D. 1923, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the District of Wyoming, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein James M. Hodgson was Appellant and the Federal Oil and Development Company, et al., were Appellees, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

1 Pleas in the District Court of the United States for the District of Wyoming, Sitting at Cheyenne.

Be It Remembered, that heretofore, and on, to wit, the 26th day of May, A. D. 1922, came James M. Hodgson and filed in said Court his Bill of Complaint and sued out of and under the seal of said Court a subpoena in chancery against Federal Oil and Development Company, a corporation, and The Mountain and Gulf Oil Company, a corporation.

And said Bill of Complaint is in words and figures as follows, towit:

2 Bill of Complaint.

In the District Court of the United States for the District of Wyoming.

James M. Hodgson, Plaintiff,
No. 1273. vs. In Equity.
Federal Oil and Development Company, a corporation, and The Mountain and Gulf Oil Company, a corporation, Defendants.

To the Honorable Judges of the District Court of the United States for the District of Wyoming:

The plaintiff brings this his bill of complaint against the above named defendants and for cause of action alleges:

1. That the defendant the Federal Oil and Development Company is a corporation organized and existing under the laws of the State of Delaware, having its principal office in the City of Wilmington in said State of Delaware, and doing business in Natrona County, Wyoming.

2. That the defendant The Mountain and Gulf Oil Company is a corporation organized and existing under the laws of the State of Wyoming, and the principal place of business and office of said corporation is located in the City of Cheyenne, County of Laramie, and State of Wyoming.

3. That the plaintiff is a citizen and resident of the State of Wyoming, and since the year 1889, has been and still is a

citizen of the United States, and during all of said time was qualified to locate and hold oil placer mining claims, and is now qualified to hold oil leases, under the laws of the United States.

4. That the jurisdiction of the United States District Court for the District of Wyoming over this suit is invoked and depends upon the following grounds, towit:

3 1st. Upon the ground that the construction, application and effect of Sections 2329, 2330, 2331, 2332 of the Revised Statutes of the United States, the Act of Congress of February 11, 1897, Chapter 216, and the Act of Congress of February 25, 1920, (Public No. 146) being an act to promote the mining of coal, phosphate, oil, oil shales, gas, and sodium on the public domain, are involved, and the amount in controversy exceeds in value the sum of three thousand dollars, exclusive of interest and costs, all of which will more fully appear from the facts hereinafter set forth.

2nd. That the plaintiff's right to recover in this action arises under and rests solely upon the construction and effect of the above mentioned Statutes of the United States, and more particularly upon the construction and effect of the Act of Congress of February 25, 1920 (Public No. 146), being an act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain, as applied to the facts hereinafter more particularly set forth.

5. That on January 11, 1887, the Southeast Quarter of Section 13, Township 40 North, Range 79 West, situate in what was then the County of Carbon and Territory of Wyoming, and is now the County of Natrona and State of Wyoming, was a part of the vacant and unappropriated public domain of the United States, over which lands the United States survey had been extended, and was on said date subject to exploration, location, entry and purchase under the placer mining laws of the United States; that on January 11, 1887, M. Iba, H. T. Snively, George McManus, sometimes known as George McManes, Perry Doan, Martin Ashcraft, Sam Bedsaul, G. B. Hall and Wm. F. Ford, being then and there, each and all of them, citizens of the United States, qualified to locate and hold oil placer mining claims under the mining laws of the United States, did enter upon the above described quarter section of land and did make a valid discovery of valuable deposits of petroleum oil, in certain

4 substantial quantities, therein and thereon, and the said M. Iba, H. T. Snively, George McManus, Perry Doan,

Martin Ashcraft, Sam Bedsaul, G. B. Hall and Wm. F. Ford, then and there associated themselves together for the purpose of locating, claiming, holding, and working in good faith, the said quarter section, as an oil placer mining claim, and did on that date, as an association of eight persons, locate the said Southeast Quarter of Section 13, Township 40 North, Range 79 West, as an association oil placer mining claim, by securely fixing upon said described quarter section of land a notice in plain printed and written letters containing the names of the claim, towit, the O'Glase, the names of the locators, towit, M. Iba, H. T. Snively, George McManus, Perry Doan, Martin Ashcraft, Sam Bedsaul, G. B. Hall, and Wm. F. Ford, the date of the discovery of said O'Glase oil placer mining claim, towit, January 11, 1887, and the number of acres claimed, towit, one hundred and sixty acres; that thereafter the said locators did designate and distinctly mark upon the ground the surface boundaries of the said oil placer mining claim by four substantial posts, one at each corner of said claim. That thereafter on February 15, 1887, and within ninety days after the date of discovery of said claim, the said discoverers and locators recorded the said O'Glase oil placer mining claim in the office of the Register of Deeds of the County of Carbon in the Territory of Wyoming, being the county within which such oil placer mining claim was situated and existed, by filing in said office a proper location certificate, which location certificate contained the name of the claim and designated it as an oil placer mining claim, towit: the O'Glase oil placer mining claim; the names of the locators, towit; M. Iba, H. T. Snively, George McManus, sometimes known as George McManes, Perry Doan, Martin Ashcraft, Sam Bedsaul, G. B. Hall and Wm. F. Ford; the date of the location, towit; January 11, 1887, the number of acres claimed, towit; one hundred and sixty acres; and such description of said oil placer mining claim by designation of such natural or fixed monuments as should identify the claim beyond question, towit; by conforming the exterior boundary lines of said oil placer mining claim to the legal subdivisions of the public lands as shown by the United States surveys, and by describing in said location certificate the said O'Glase oil placer mining claim as the Southeast Quarter of Section 13, Township 40 North, Range 79 West, situate in the Rattlesnake Mining District, Carbon County, Wyoming Territory, now the County of Natrona and State of Wyoming, which location certificate was duly recorded in Book F. at page 402, of the Mining Records of said Carbon County.

6. That the said Southeast Quarter of Section 13, Township 40 North, Range 79 West, located and known as the O'Glase oil placer mining claim contains valuable mineral deposits, towit; petroleum and other mineral oils, and the lands embraced within the exterior boundaries of said oil placer mining claim are chiefly valuable for the petroleum contained therein.

7. That the said George McManus, and his co-locators and co-owners have complied with all the requirements of the laws of the United States, of the Territory and State of Wyoming, and with the local customs or rules of miners in the said Rattlesnake Mining District, so far as the same are applicable and not inconsistent with the laws of the United States, in the matter of the doing of the annual work upon the said O'Glase oil placer mining claim by performing or causing to be performed thereon not less than one hundred dollars' worth of labor, or improvements made, during each year since the year 1887, down to and including the year 1920.

8. That the said George McManus, sometimes known as George McManes, and his co-locators and co-owners, were and continued to be in the actual, open, exclusive, and uninterrupted possession, without any adverse claim being made thereto, of the said Southeast Quarter of Section 13,
6 Township 40 North, Range 79 West of the 6th P. M. located and known as the O'Glase oil placer mining claim, working the same continuously, for ten successive years from the date of discovery and location thereof, towit, January 11, 1887, and that said actual, open, exclusive and uninterrupted possession of the said O'Glase oil placer mining claim, without any adverse claim being made thereto, and the working thereof, was continuous from the said 11th day of January, 1887, down to and including January 1897, and that said possession and working continued down to and including the date of the Executive Order of Withdrawal of September 27, 1909, and that thereby the said George McManus, his co-locators and co-owners, and the respective successors in interest and assigns of his said co-locators, became and were vested with the fee title of, in and to the said O'Glase oil placer mining claim, being the Southeast Quarter of Section 13, Township 40 North, Range 79 West of the 6th P. M. under and by virtue of the provisions of Section 2332 of the Revised Statutes of the United States, and were then and there entitled to a patent from the United States for said oil placer mining claim, under the provisions of Section 2332 of the said Revised Statutes.

9. That by the Act of Congress approved February 11, 1897, (29 Stat. 526) the United States recognized, approved and confirmed the location, claim and right of the said George McManus, and his co-locators and co-owners, in and to the said placer mining claim so located, worked, developed, held, and known as the O'Glase oil placer mining claim and specifically described as the Southeast Quarter of Section 13, Township 40 North, Range 79 West, in Natrona County, Wyoming.

10. That the said Southeast Quarter of Section 13, Township 40 North, Range 79 West, in Natrona County, Wyoming, located and known as the O'Glase oil placer mining claim, is situated within the limits of the area embraced and in-
7 cluded within the Executive Order of Withdrawal issued by the President of the United States of date September 27, 1909; and that the said George McManus and his co-locators and co-owners have remained in the open, notorious, exclusive, continuous, and undisturbed possession, use, enjoyment and development of the Southeast Quarter of Section 13, Township 40 North, Range 79 West, located and known as the O'Glase oil placer mining claim, from the time of its said location by the said George McManus and his said co-locators on January 11, 1887, down to the present time. That by the said Executive Order of Withdrawal of September 27, 1909, the area embraced and included therein was withdrawn from further location, entry, and purchase under the mining laws of the United States, and that said Executive Order of Withdrawal of September 27, 1909, has never been recalled or revoked prior to February 25, 1920.

11. That at the date of the said Executive Order of Withdrawal of September 27, 1909, the said Southeast Quarter of Section 13, Township 40 North, Range 79 West, located and known as the O'Glase oil placer mining claim, was a valid and subsisting oil placer mining claim under the mining laws of the United States by virtue of the actual discovery therein of valuable deposits of petroleum oil in certain and substantial quantities, the doing of the various acts of location hereinbefore set forth as required by law, and the performance thereon of not less than one hundred dollars' worth of labor, or improvements made, on said oil placer mining claim, and the continuous working thereof, during each year since January 11, 1887, down to and including the date of the Executive Order of Withdrawal of September 27, 1909, by the said George McManus and his co-locators and co-owners of said placer mining claim.

12. That the rights, title, interests, and estate of the said original locator George McManus, sometimes known as George McManes, his heirs, and of this plaintiff as their successor in interest, and the rights, title, interests, and
8 estate of his co-locators and co-owners, under the mining laws of the United States, in and to the said Southeast Quarter of Section 13, Township 40 North, Range 79 West, located known and held as the O'Glase oil placer mining claim, have never been forfeited, and have never been abandoned.

13. That the said Southeast Quarter of Section 13, Township 40 North, Range 79 West of the 6th P. M. in Natrona County, Wyoming, is not, and never was, included and embraced within any naval petroleum reserve, and is within the limits of the geologic structure of the Salt Creek Oil Field as established by the United States Geological Survey on on April 2, 1920.

14. That the said George McManus died intestate on or about the 16th day of September, 1901, leaving him surviving as his sole heirs at law, a widow, Anna McManus, a daughter, Octavia Green, formerly Octavia McManus, and a grandson, Charles F. Trusty; that during all the time from January 11, 1887, up to and until the commencement of this action, the said Anna McManus and the said Octavia Green have never been citizens or residents of the State of Wyoming, and have never been within the State of Wyoming, and during all the said time, but at different periods thereof, have been citizens and residents of the State of Nebraska and Iowa, and that the said Charles F. Trusty was never a citizen or resident of Wyoming until ..... years immediately preceding the commencement of this action.

15. That none of the said heirs at law of the said George McManus, deceased, knew or had any knowledge or information leading to knowledge of the right, title, interest and estate of the said George McManus, in and to the said Southeast Quarter of Section 13, Township 40 North, Range 79 West, under the mining laws of the United States, or otherwise, until on and after the 11th day of February, 1922; that none of said heirs of said George McManus, deceased, had or acquired until February 11, 1922, any actual knowledge of the right and privilege granted them by the Act of
9 Congress of February 25, 1920 (Public No. 146), known as the Oil Leasing Bill, to make application, within six months after the approval of said act, for and to be granted an oil and gas lease on the said Southeast Quarter of Section

13, Township 40 North, Range 79 West, or for a one-eighth part thereof, under the provisions of said Act of Congress of February 25, 1920, granting and confirming to all owners of the mining title under the preexisting placer mining law the preferential right to an oil lease for any oil or gas bearing lands theretofore duly located as oil placer mining claims under the mining laws of the United States and embraced within the Executive Order of Withdrawal issued September 27, 1909, upon which there had been discovered oil in certain and substantial quantities prior to said Executive Order of Withdrawal of September 27, 1909.

16. That on and since the 11th day of February 1922, the said Anna McManus, Octavia Green, and Charles F. Trusty, as the sole heirs at law of the said George McManus, deceased, for a good and valuable consideration to them paid by this plaintiff, did grant, sell and convey to this plaintiff, his heirs and assigns, by proper deeds of conveyance, duly executed, delivered, acknowledged and recorded, all their right, title, interest, estate, and demand, of, in and to the said Southeast Quarter of Section 13, Township 40 North, Range 79 West, located, known, worked and held by the said George McManus and his co-locators thereof as the O'Glase oil placer mining claim; and that this plaintiff is still the owner and holder thereof and entitled to the possession of said interest and estate in the said premises and the oil contents thereof, and to an undivided one-eighth interest in and to any oil and gas produced and extracted from said lands and any oil lease covering the said premises that may have been issued by the Government of the United States, under the provisions of Section 18 of the said Act of Congress of February 25, 1920, to any person or corporation claiming at the date of the issuance of such lease to be owners of the fee title to said premises under the pre-existing placer mining laws of the United States, or claiming to be the successor in interest to the rightful claimant or owner of the mining title to said premises as a locator or locators thereof.

17. That the said George McManus during his lifetime never sold, granted, and conveyed, and never executed any deed, instrument, or conveyance, selling, transferring, conveying, or encumbering, his right, title, interest and estate in and to the said Southeast Quarter of Section 13, Township 40, North Range 79 West, located and known as the O'Glase oil placer mining claim, or any part thereof, to any person or corporation whatsoever, nor did any person or persons being thereunto lawfully authorized ever sell, convey, or transfer

the said title, interest and estate of the said George McManus in said described premises, or any part thereof, to any person or corporation whatsoever; and that his said heirs after the death of the said George McManus never made any deed or conveyance, or executed any instrument, selling, conveying or transferring their inherited interests and estates in the said Southeast Quarter of Section 13, Township 40 North, Range 79 West, to any person or corporation whatsoever, save and except to this plaintiff.

18. That on August 21, 1920, the defendant the Federal Oil and Development Company, claiming to be the successor in interest of all the locators of said O'Glase oil placer mining claim, including the title, interest and estate of the said George McManus therein, and the owner and holder of the fee title thereto under the mining laws of the United States, filed in the United States Land Office at Douglas, Wyoming, its application for oil and gas lease on the said Southeast Quarter of Section 13, Township 40 North, Range 79 West of the 6th P. M. in Natrona County, Wyoming, under the provisions of section 18 of the Act of Congress of February 25, 1920, (Public No. 146); that in this said application for such lease, the said defendant the Federal Oil and Development Company, inter alia, stated as follows:

11 "The claim of this claimant and its predecessors in interest in said land was initiated under the placer mining law prior to July 3, 1910, to-wit, on or prior to January 11, 1887, by location and entry under the placer mining laws by M. Iba, H. T. Snively, George McManes, Perry Doan, Martin Asheraft, Sam Bedsaul, C. B. Hall, and Wm. F. Ford. The recorded certificate of location dated January 11, 1887, is shown by the certified abstract of title to be filed forthwith in connection with this application identified as Exhibit "A" and hereby made part hereof."

"The said claim has been claimed and possessed continuously since prior to July 3, 1910, by this claimant and its predecessors in interest, and is now claimed and possessed by it."

That said application so filed in the said United States Land Office on August 21, 1920, was not made under oath as required by Section 25 of the rules and regulations concerning oil and gas permits and leases, promulgated by Secretary of the Interior under authority of the said Act of Congress of February 25, 1920; that thereafter on the 1st day of April, 1921, one Halsted L. Ritter, then president of the Federal

Oil and Development Company, made and filed an affidavit in support of said application of the defendant, The Federal Oil and Development Company, for an oil and gas lease upon the said premises, in which affidavit, inter alia, it is stated:

"That said company purchased said land in the due course of trade, in which they relied upon the record title to the same."

"That said company purchased said land in full confidence, and belief, and without any knowledge or reasonable ground to know otherwise, that Cy Iba located said lands under a certain power of attorney as trustee for the locators named therein, with powers in said instrument set forth which were legally valid."

whereas in truth and in fact the record of the title, and also the abstract of title filed by said applicant as a part of its application for a lease on said premises, shows that said Southeast Quarter of Section 13, Township 40 North, Range 79 West, of the Sixth Principal Meridian was not located by Cy Iba under any power of attorney or as trustee for the locators named in the location certificate thereof, and that Cy Iba was not a locator or co-locator of said oil placer mining claim; and that the record of the title to said premises, and the said abstract filed by said application as part of its
12 application for such lease, shows that the said George McManus never parted with his title, interest and estate in said premises by any deed, assignment, or any other instrument in writing, executed by him, nor by [and] deed, instrument, or conveyance of said premises executed by any person or persons thereunto duly authorized by said George McManus, or his heirs, so to do.

19. That on March 25, 1921, the Commissioner of the General Land Office of the United States by letter and decision of said date recommended to the Secretary of Interior of the United States that an oil and gas lease under Section 18 of the Act of February 25, 1920, for the Southeast Quarter of Section 13, Township 40 North, Range 79 West of the 6th P. M. in the Salt Creek Oil Field be granted to the defendant the Federal Oil and Development Company, and the said letter and decision of the Commissioner of the General Land Office was in all things approved and confirmed on April 1, 1921, by the Secretary of Interior; that pursuant to said letter and decision of the Commissioner of the General Land Office and its approval by the Secretary of Interior as afore-

said, an oil and gas lease covering and conveying said premises was thereafter executed and delivered as of the 21st day of August, 1920, by The United States of America to the defendant the Federal Oil and Development Company; that by the terms of said lease the Government of the United States did grant and lease to the said lessee the exclusive right and privilege to drill for, mine, extract, remove and dispose of all oil and gas deposits in or under the said premises, together with the right to construct and maintain thereupon all works, buildings, plants, waterways, roads, telegraph or telephone lines, pipe lines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment thereof, for a period of twenty years, with the preferential right in the said lessee to renew said lease for successive periods of ten years upon such reasonable terms and conditions
13 as may be prescribed by the said lessor, unless otherwise provided by law at the time of the expiration of such periods, and reserving to the lessor a rental of one dollar per acre per annum during the continuance of said lease, together with a royalty on all oil produced from the said premises, of not less than twelve and one half per cent, and not more than twenty five per cent, the said royalties being graduated according to the quality and quantity of the oil produced and extracted from said premises; and on all gas and casing-head gasoline produced and taken from said premises, a royalty of twelve and one-half per cent of the value thereof in the field where produced where the average production per day for the calendar month from the land leased is less than three million cubic feet, and sixteen and two-thirds per cent where the average daily production is three million cubic feet, or over, and that by said lease the said lessee, covenanted, inter alia, not to assign said lease or any interest therein, nor sublet any portion of the leased premises, except with the consent in writing of the Secretary of Interior, first had and obtained.

20. That in the said letter and decision of the Commissioner of General Land Office of date March 25, 1921, awarding and granting said oil and gas lease to the defendant The Federal Oil and Development Company, approved and ratified by the Secretary of Interior of the United States on April 1, 1921, it was by the said Commissioner of the General Land Office and the Secretary of Interior, inter alia, found as follows:

"On May 15, 1918, the aforesaid applicant company filed mineral application 016998, Douglas series, for said land, and

by letter "FS" of December 8, 1919, it was ordered that adverse proceedings be had in said case, but the application was withdrawn, and by letter "FS" of March 25, 1920, the case was closed."

"The application for lease depends, as did the mineral application, upon the O'Glase oil placer mining location, made January 11, 1887, by a group of the Iba locators, namely, N. Iba, H. T. Snively, George McManes, Perry Doan, Martin Asheraft, Sam Bedsaul, and W. F. Ford. Prior to the making of the location, these locators, except possibly Ford as to whom there is some doubt, had given a so-called power of attorney to Cy Iba to locate, stake, and record in their names claims such as the O'Glase."

14 "the same as if we did it ourselves, and if located, or when, or after locating same to appropriate same to his sole and personal use, together with all right, title and interest in same, we hereby granting and conveying same to him as our grantee for a valuable consideration.

"M. Iba, Hall, Snively, Asheraft and Bedsaul granted such a power of attorney to Cy Iba on April 6, 1886. Doan and McManes and also Bedsaul granted such a power to Cy Iba and Shepherd Fales on March 11, 1884. On December 31, 1888, Hall revoked his power of attorney to Cy Iba and granted a like power to Iver Johnson. It does not appear that W. F. Ford ever granted such a power of attorney, but April 6, 1886, Wm. D. Fort, granted such power of attorney to Cy Iba, and it has been generally assumed that this name is an error in the records and that the name of Wm. F. Ford was what was meant.

"On February 18, 1890, Cy Iba executed, as attorney in fact for the locators, a quit-claim deed by which was conveyed to Victoria A. D. Johnson, an undivided one-half interest in the O'Glase claim. On March 16, 1900, Bedsaul and Asheraft conveyed what interest they had in the claim to Cy Iba. On July 9, 1900, M. Iba (Mary G. Iba or Mrs. Cy Iba) confirmed the power, which she had granted to Cy Iba. On April 12, 1905, Cy Iba conveyed a one-half undivided interest in the claim to Joseph H. Lobell, and February 16, 1907, Victoria A. D. Johnson conveyed an undivided one-half interest in the claim to Frederick J. Lobell, who two days later conveyed same to Joseph H. Lobell. The title to the claim thus acquired by Joseph H. Lobell passed August 26, 1915, to the applicant."

"The status of the fee title to the claim was considered by this office in the letter "FS" of December 8, 1919, in regard to the mineral application aforesaid, and it was held that the title in the land was as follows:

Federal Oil and Development Co.,	10/16	interest.
M. Iba	1/16	"
H. T. Snively	1/16	"
George McManes	1/16	"
Perry Doan	1/16	"
William F. Ford	1/16	"
George B. Hall	1/16	"

"However the matter of the Iba chains of title has been recently more carefully considered by this office and the conclusions reached were set forth in a decision "A" of February 28, 1921, in the case of Application for lease, Douglas 028027, of F. G. Bonfils, and may be summed up as follows."

"The so-called powers of attorney granted by Cy Iba were deeds of trust by which Cy Iba was authorized to sell and convey such claims as the O'Glase, after same were located, and such deeds of trust were not revocable without the consent of Cy Iba, which consent he did not give to anyone. Hence, it follows that Cy Iba had authority to convey the legal title to the O'Glase claim, as he did."

"The foregoing is all shown by the abstract of title filed with the application."

15 "Since the applicant is holder of the fee title to the O'Glase claim and has surrendered same to the United States, the question of the mining title to the land involved is not in issue."

21. That by the provisions of Section 18 of the said Act of Congress of February 25, 1920, the applicant for an oil and gas lease on any lands theretofore withdrawn by the Executive Order of Withdrawal of September 27, 1909, must found his application for such lease upon and be possessed of the title of the locators of such oil and gas bearing lands under the pre-existing placer mining law, and must in fact and in law be possessed of all the right, title, interest and claim of the locators in and to such oil placer mining claim, in order to entitle such applicant to an oil and gas lease on such oil lands that had heretofore been located, worked and held under the pre-existing placer mining law of the United States.

22. That the record of the title to said Southeast Quarter of Section 13, Township 40 North, Range 79 West of the 6th

P. M. and the abstract of title filed by said defendant the Federal Oil and Development Company as part of its application for said lease, shows and the fact is that on the 11th day of March, 1884, George McManus, Perry Doane, Sam Bedsaul, Scott Morford, James McFarland, William Hudson and William Meyers, executed and delivered one certain power of attorney to one Shepherd Fales and one Cy Iba to locate for said principals named in said power of attorney lode claims and placer mining claims in the Rattlesnake Mining District, Carbon County, Territory of Wyoming, and delegated and appointed the said Shepherd Fales and Cy Iba to jointly sell and convey as joint agent for their said principals, and not otherwise, such lode claims and placer mining claims as might be located by the said Shepherd Fales and Cy Iba as attorneys in fact for their said principals above named, all of which appears on the [fact] of said instrument; that said power of attorney is found of record in Book G. at page 333, of the Miscellaneous Records in Carbon County, Wy-
16 oming, and in Book C. of Transcripts, on page 55, of the records of Natrona County, Wyoming. That by the terms of the said power of attorney all the right, power, and authority delegated thereby was delegated to the said Shepherd Fales and Cy Iba as joint agents, and not severally, and required the joint exercise and execution thereof by the said constituents named in the said power as the agents of the said George McManus and his co-principals named therein; that the said Southeast Quarter of Section 13, Township 40 North, Range 79 West of the 6th P. M. known as the O'Glase oil placer mining claim, was not located by the said Shepherd Fales and Cy Iba acting as the joint agents and attorneys in fact for the said George McManus and any of his co-principals named in said power; that if the said O'Glase oil placer mining claim was located by the said Cy Iba acting alone under color of said power of attorney, then the record of said title shows and the fact is that said power to sell and convey mining claims located and held in the Territory of Wyoming for and in the name of the said George McManus and his co-principals named therein was never exercised jointly by the said Shepherd Fales and Cy Iba, or as joint agents of their said principals, and that no deed, or other instrument, conveying said premises has ever been executed and delivered by the said Shepherd Fales and Cy Iba acting in the joint exercise of said power; that the said Shepherd Fales never joined with the said Cy Iba in the execution of any conveyance of the premises hereinbefore described, or any part thereof, and never granted, sold, or conveyed any interest or estate

of the said George McManus in the premises hereinbefore described by deed or any other instrument executed or purporting to be executed as attorney in fact for the said George McManus, or executed or purporting to be executed by said Shepherd Fales in his own behalf; that the said George McManus never during his lifetime made, executed, or delivered, any other power of attorney, or instrument in writing, authorizing, delegating, and empowering Cy Iba, or any other person, to locate or sell and convey oil placer mining
17 claims in the Territory and State of Wyoming, or in any other place, other than the said power of attorney executed on the 11th day of March, 1884, running to and specifically naming therein Shepherd Fales and Cy Iba to act jointly as the attorneys in fact and joint agents only of said George McManus and his co-principals for the purpose therein named; and that the said Cy Iba never possessed any right, power or authority, or had conferred upon him by said George McManus any right, power or authority, to make a separate and several conveyance of the right, title, interest and estate of the said George McManus in and to the said premises. That the said power of attorney is not the same power, either in fact, in substance, and in its legal effect, as the power considered and construed by the Commissioner of the General Land Office in the decision "A" of February 28, 1921, in the case of the application for lease, Douglas 028027 of F. G. Bonfils, said decision being referred to and relied upon by the Commissioner of the General Land Office in his said decision of March 25, 1921, in the said application for lease of the defendant the Federal Oil and Development Company, as ruling and being decisive of the law applicable to and governing the said power of attorney so given by the said George McManus and his co-principals hereinbefore named to Shepherd Fales and Cy Iba on March 11, 1884.

23. That the record of the title, and the abstract of title filed by the applicant as a part of its application for said lease, to the said Southeast Quarter of Section 13, Township 40 North, Range 79 West of the 6th P. M. shows by the location certificate thereof recorded on February 15, 1887, in Book "F" of Mining Records, at page 402, of the records of Carbon County, Wyoming, and recorded in Book "F" Transcripts, at page 500, of the records of Natrona County, Wyoming, and the fact is that the said Southeast Quarter of Section 13, Township 40 North, Range 79 West of the 6th P. M. was located as the O'Glase oil placer mining claim on January 11, 1887, by M. Iba, H. T. Snively, George McManus, Perry

Doan, Martin Ashcraft, Sam Bedsaul, G. B. Hall, and
18 Wm. F. Ford, by each individually, or in his own behalf, and was not located by the said locators by or through Shepherd Fales and Cy Iba acting jointly as their attorneys in fact, or by Cy Iba as attorney in fact for said locators, or any of them, or by Cy Iba; and the name of Cy Iba does not appear upon or in said location certificate of said O'Glase oil placer mining claim, as a locator thereof, or otherwise.

24. That the record of the title, and the abstract of title filed by the defendant with its application for said lease, to said Southeast Quarter of Section 13, Township 40 North, Range 79 West of the 6th P. M. further shows that on February 18, 1890, one Cy Iba, pretending to act as attorney in fact for the said George McManus, executed a deed to one Victoria A. D. Johnson, purporting and pretending to convey to the grantee named in said deed, an undivided one-half interest in and to said premises; that said deed was not executed and delivered by Shepherd Fales jointly with said Cy Iba, nor was Shepherd Fales named as a grantor therein, nor was he a party thereto, and in no manner joined in said deed, all of which is shown on the face of said deed; that said deed was not the deed of George McManus or any agent duly authorized thereto, and in fact and in law the said deed did not convey any of the right, title, interest and estate of the said George McManus in and to the above described premises; that said deed was filed for record in the office of the Register of Deeds of Natrona County, Wyoming, on April 4, 1895, and recorded in Book 1 of Deeds, at page 500, of the Records of said County.

25. That the record of the title to the said O'Glase oil placer mining claim shows and the fact is that on April 12, 1905, the said Cy Iba executed in his sole behalf a quit-claim deed purporting and pretending to convey to one Joseph H. Lobell an undivided one-half interest in the said premises; that said deed was not executed by said Cy Iba as attorney in fact for the said George McManus or any other of his principals named in said power of attorney, or as attorney
19 in fact for the said George McManus and his co-locators and co-owners of the said Southeast Quarter of Section 13, Township 40 North, Range 79 West of the 6th P. M. and known, located, worked and held by them under the name of the O'Glase placer mining claim; that the said Shepherd Fales did not execute and did not join in the execution and delivery of the said deed, either individually, or as attorney

in fact for the said George McManus or any of his co-principals named in said power of attorney, or as attorney in fact for the said George McManus or any of his co-locators and co-owners of said described oil placer mining claim, and that said deed was not the deed of George McManus, all of said facts being shown on the face of the said deed; that in fact and in law said deed did not convey any of the right, title, interest and estate of the said George McManus in and to the said premises or any part thereof, and was executed and delivered long after the death of said George McManus. That said deed was filed for record in the office of the Register of Deeds of Natrona County, Wyoming, on April 14, 1905, and recorded in Book 4 of Deeds, at page 372, of the records of said County.

26. That said deeds are the deeds referred to and relied upon the Commissioner of General Land Office in his decision of March 25, 1921, granting said lease to the defendant the Federal Oil and Development Company, as being sufficient in law to convey the mining title under the preexisting placer mining law, and the interest and estate of George McManus in said premises, to the applicant for said lease.

27. That no other deeds or instruments of conveyance purporting to convey the right, title, interest and estate of said George McManus in and to the said premises have ever been executed or recorded, other than those hereinbefore set forth; that the color of title thus claimed to be acquired by the said Johnson and Lobell passed on or about August 26, 1915, to the said applicant; and that the said pretended right and title of the said defendant the Federal Oil and Development Company to the said title, interest, and estate of the said George McManus under the preexisting placer mining law in and to the said premises, upon which the said oil and gas lease was applied for and afterwards granted, is found and rests solely upon the said deeds hereinbefore described from the said Cy Iba to the said Victoria A. D. Johnson and Joseph H. Lobell.

28. That in the said decision of the Commissioner of the General Land Office rendered under date of March 25, 1921, approving said application and recommending the granting of said oil and gas lease to the defendant the Federal Oil and Development Company, subsequently approved, adopted, and confirmed by the Secretary of Interior on April 1, 1921, the said Commissioner of the General Land Office and Secretary of Interior found as a matter and conclusion of law that the said power of attorney hereinbefore referred to given by

the said George McManus and his co-principals named therein on March 11, 1884, to the said Shepherd Fales and Cy Iba jointly was an irrevocable deed of trust authorizing and empowering the said Cy Iba to sell and convey all the right, title, interest and estate of the said George McManus in and to the said Southeast Quarter of Section 13, Township 40 North, Range 79 West of the 6th P. M. located and known as the O'Glase oil placer mining claim; and further found as a matter of law that the said deeds executed and delivered by Cy Iba to Victoria A. D. Johnson on the 18th day of February, 1890, and to Joseph H. Lobell on April 12, 1905 conveyed to said grantees the mining title to the said O'Glase oil placer mining claim, and all the right, title, estate claim, and interest therein of the said George McManus to the said grantees; and further found as a matter of law that all the right, title, interest and estate of the said George McManus in and to said premises had passed to and vested in the Federal Oil and Development Company on or about August 26, 1915, by virtue of said deeds; and further found as a matter of of law that the [all] claim, right, title, interest and estate under the pre-existing placer mining law of the said George McManus and
21 his co-locators of said oil placer mining claim, which entitled the owners and holders thereof to a first and preferential right to an oil and gas lease of said premises under said Act of Congress of February 25, 1920, had passed to and was vested in the said defendant the Federal Oil and Development Company on and prior to the date of the application for said lease; and further found as a matter of law that the defendant the Federal Oil and Development Company was the holder of the fee title to the O'Glase oil placer mining claim and that the question of the mining title to the said premises was not in issue, and that the title held and possessed by said applicant was sufficient in law to entitle it to a leae under the provisions of said Act of Congress of February 25, 1920, applicable thereto; and further found as a matter and conclusion of law that the quit-claim deed executed and delivered to the United States by the said applicant on August 20, 1920, relinquished and conveyed to the United States all the right, title, interest, claim, and estate of the claimants or locators, and each of them, including the said George McManus, in and to said premises as an oil placer claim, and relinquished and conveyed all the mining title to said premises held by said locators under the pre-existing placer mining law. That by and in making the said decision, and the findings or conclusions of law on which the same is based, and in granting the said lease to the said Fed-

eral Oil and Development Company, the said Commissioner of the General Land Office and Secretary of Interior mistook, misconstrued, and misapplied the law applicable to said power of attorney and deeds and the title upon which the said application for lease was founded, and particularly the construction and application of the provisions of said Act of Congress of February 25, 1920, (Public No. 146), and Sections 2330 and 2331 of the Revised Statutes of the United States, and by reason of such mistake in, and misconstruction and misapplication of, the law applicable thereto, granted the said oil and gas lease to the said defendant the Federal Oil and Development Company.

22 29. That on the 28th day of April, 1921, with the consent of the Secretary of Interior, first had and obtained, the defendant the Federal Oil and Development Company assigned and transferred to the defendant The Mountain and Gulf Oil Company the said oil and gas lease, reserving to itself forty per cent of the net proceeds derived from the oil and gas produced and extracted from said leased premises.

30. That on said 21st day of August 1920, being the date of the application made by said defendant the Federal Oil and Development Company, for said oil and gas lease, and long prior thereto, and at and prior to the time of said assignment of said oil and gas lease to the defendant The Mountain and Gulf Oil Company, the said defendants, and each of them, had full knowledge and notice, actual and constructive, of all the claim, right, title, estate and interest of the said George McManus, his heirs and their successor in interest, in and to an undivided one-eighth interest in said premises and the oil contents thereof, and of their right under the law to an undivided one-eighth interest in any oil and gas lease of said premises and the estate for years thereby created that might be granted by the United States under the provisions of said Act of Congress of February 25, 1920, and to an undivided one-eighth interest in and to the proceeds of all oil and gas produced and extracted from said premises, after the payment of all costs and expenses of production thereof and the payment to the United States of the royalty reserved by such lease.

31. That by reason of all and singular the matters and facts in this bill of complaint alleged this plaintiff is now a co-tenant of the said defendants, and each of them, in said leased premises under said oil and gas lease granted to said defendant the Federal Oil and Development Company by the United States of America as of August 21, 1920, and right-

fully entitled to an undivided one-eighth interest in and to the said oil and gas lease, and the estate for years created
23 and conveyed to the defendants, and the oil extracted therefrom, subject to the payment and deduction of the cost and expense of development, operation, and production, and the payment of said royalty to the United States; and that the said defendants now hold said undivided one-eighth interest in and to said oil and gas lease, the said leased premises and the estate for years therein by said lease created and conveyed, and the oil and other mineral contents thereof, and any and all oil that has heretofore been or may hereafter be produced and sold from said leased premises, as trustees for this plaintiff.

32. That the said defendants are now in the actual possession of said premises, and the oil contents thereof and produced therefrom, under and pursuant to the terms of said lease, and are now engaged in extracting oil therefrom in large quantities, selling the same, and appropriating to their sole use and benefit the entire net proceeds of said oil and excluding this plaintiff from any interest or share therein, and without regard to this plaintiff's paramount and superior equitable right and title to a one-eighth interest in and to said premises and said government lease therefor and the estate for years thereby created and conveyed to said defendants, and the oil contents thereof, and of all oil or other mineral that has heretofore been or may hereafter be produced and sold therefrom, and the said defendants, and each of them, have refused and still refuse to recognize the paramount and superior right, title, claim, interest and estate, legal or equitable, of this plaintiff to said one-eighth interest in and to said leased premises, the oil contents thereof, and any and all oil that has been or that may hereafter be produced and sold therefrom.

33. The plaintiff alleges upon information and belief that since the granting to the defendant the Federal Oil and Development Company, of said oil and gas lease as of the 21st day of August, 1920, the average daily production of
24 oil extracted from said premises by the defendants has been and still is in excess of twelve hundred barrels per day; that the value of said leased premises, the estate for years therein created and conveyed by said oil and gas lease, and the oil and other mineral contents thereof, is the sum of two million four hundred thousand dollars.

34. That by Section 18 of said Act of Congress of February 25, 1920, it is provided that all leases granted under said

Act shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear; that this plaintiff as the successor in interest of the said George McManus and his said heirs at law and to the mining title held in fee by his said grantors at the time of the granting of said oil and gas lease is the owner of and has the equitable title to said undivided one-eighth interest in said leased premises and the estate for years therein created and conveyed by said oil and gas lease, so granted to the defendant the Federal Oil and Development Company, and now held in trust by said defendants, and each of them, as trustees and for the benefit of this plaintiff as the successor to said mining title and all the interest and estate therein of the said George McManus, the claimant to and one of the original locators of said premises under the pre-existing placer mining law, and that the claim of plaintiff as a cotenant of the defendants in said leased premises and the estate for years therein comes within the purview and meaning of said inuring clause of section 18 of said Act of Congress.

35. That neither this plaintiff or the said heirs of said George McManus have ever applied for or received any oil and gas lease to any oil and gas bearing lands under the provisions of said Act of Congress of February 25, 1920; that this plaintiff has not acquired any interest in any oil or gas bearing lands since September 1, 1919, from a claimant on or since said date claiming or holding more than the maximum amount of such land allowed to a claimant under section 18 of the said Act of Congress of February 25, 1920; that this plaintiff has not been guilty of any fraud or had any knowledge or reasonable ground to know of any fraud in connection with said mining claim, and has acted honestly and in good faith.

36. This plaintiff alleges that by reason of all the matters and facts hereinbefore set forth the said defendants are and of right ought to be estopped to deny the right and title of this plaintiff to an undivided one-eighth interest in and to said leased premises and in the said oil and gas lease and the estate for years thereby created and conveyed, and to said proportion of the oil and other mineral contents of said premises, and this plaintiff hereby expressly pleads all the foregoing matters and facts by way of estoppel against the said defendants, and each of them.

37. That this plaintiff hereby expressly offers to do equity in the premises, and declares himself ready and willing to

do and perform any and all acts and things that may be required of him by the court as a condition of granting the relief sought in this action conformable to the rules and practice of equity.

[37.] All which acts, doings and pretenses of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of the plaintiff in the premises. That the plaintiff has no plain, adequate and complete remedy at law in the premises, and can only have relief in a court of equity where matters of this nature are properly cognizable and relievable.

Wherefore, the plaintiff prays judgment:

1. That it be adjudged and decreed by this court that the plaintiff is the owner of an undivided one-eighth interest in and to said leased premises and the estate for years therein created and conveyed by the said oil and gas lease granted by the Government of the United States as of date August 21, 1920, to the defendant the Federal Oil and Development Company, and thereafter assigned as hereinbefore set forth to the defendant The Mountain and Gulf Oil Company,
26 and of an undivided one-eighth interest in all petroleum oil, gas, and other mineral contents of said leased premises, for and during the term of said lease, and any renewals and extensions thereof; and that the defendants be adjudged and decreed to hold said undivided one-eighth interest in said leased premises, the said lease and the estate for years thereby created and conveyed, the oil contents of said leased premises, and oil extracted and produced therefrom, as trustees for this plaintiff.

2. That the plaintiff be adjudged and decreed to be a tenant in common with the said defendants, and each of them, in said oil and gas lease, leased premises, and the estate for years therein, and of the oil and gas contained in said premises, and of all oil produced and extracted therefrom.

3. That said defendants, and each of them, be ordered by the judgment and decree of this court to execute and deliver to this plaintiff a proper instrument of assignment conveying to plaintiff an undivided one-eighth interest in and to said oil and gas lease, the said leased premises, and the estate for years therein created and conveyed by said lease, and any and all renewals and extensions thereof, subject to all the terms covenants, and conditions of said lease, and such renewals and extensions; and that if it should be considered by this court that the consent of the Secretary of Interior of the

United States must be first had and obtained to such assignment of said interest in said oil and gas lease, then that the defendants, and each of them, be ordered by the decree of this court to prepare and present to the Secretary of Interior for his approval a proper assignment executed and acknowledged by the defendants conveying and assigning to this
27 plaintiff such undivided one-eighth interest in said leased premises, the oil and gas lease covering and conveying the same, and the estate for years in said premises created by the said lease, and any and all renewals and extensions thereof, subject to all the limitations and provisions of said lease, renewals and extensions, and that the assignment to be submitted to the Secretary of Interior for his consent thereto shall be first submitted to this court for its approval, to the end that all the rights and interests of this plaintiff, the said defendants, and the United States, in the premises shall be fully defined and protected.

4. That the said defendants be ordered by the decree of this court to account to plaintiff for all oil produced from said leased premises, and the proceeds derived from any sale or other disposition of said oil, after deducting the actual cost and expense of operation and production, and for any interest therein that may have been sold or disposed of by said defendants, other than the said royalty to the United States.

5. That the plaintiff may have such further or other relief in the premises as the nature of the circumstances of this case may require, and to the court shall seem meet and proper.

J. M. HODGSON,
Solicitor for Plaintiff.

Endorsed: Filed in the District Court on May 26, 1922.

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28 Subpoena in Chancery.

United States District Court, District of Wyoming.

United States of America,
District of Wyoming—ss.

In the District Court of the United States for the District of Wyoming, Sitting at Cheyenne.

The President of the United States of America, To Federal Oil and Development Company, a corporation, and The Mountain and Gulf Oil Company, a corporation—Greeting:

You and each of you are hereby commanded, that you appear before the Judge of the District Court of the United

States, for the District of Wyoming, at the city of Cheyenne, in said District, twenty days from the date hereof, to answer the Bill of Complaint of James M. Hodgson this day filed in the office of the Clerk of said Court, in said city of Cheyenne, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said Bill of Complaint, upon pain of judgment being pronounced against you by default, and a decree had and entered accordingly.

To the Marshal of the District of Wyoming to execute and make due return.

Witness, The Honorable T. Blake Kennedy, Judge of the District Court of the United States, for the District of Wyoming, and the seal of the said District Court, at the city of Cheyenne, aforesaid, this 26th day of May, in the year of our Lord one thousand nine hundred and twenty-two and of the independence of the United States, the 146th year.

(Seal) CHARLES J. OHNHAUS,
By Capitola G. Allison, Deputy Clerk.

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29 Memorandum.

The above named defendants are hereby notified that unless they and each of them shall file their answer or other defense in the office of the Clerk of said Court, at the city of Cheyenne aforesaid, on or before the twentieth day after service, excluding the day thereof, the Bill of Complaint may be taken pro confesso.

CHARLES J. OHNHAUS, Clerk,
By Capitola G. Allison, Deputy Clerk.

United States of America,
District of Wyoming—ss.

I, Hugh L. Patton, United States Marshal for the District of Wyoming received the within subpoena in chancery at Cheyenne, May 26th, and executed same by serving the within or foregoing subpoena in chancery on the defendant The Mountain & Gulf Oil Company, a corporation, by delivering to and leaving with Thomas Hunter, personally, a true and correct copy of said subpoena in chancery in the city of Cheyenne, County of Laramie, and State of Wyoming, on the 29th day of May, 1922, the said Thomas Hunter being then

and there the agent for service of said corporation upon whom process against said corporation may be served.

That I served the Within Subpoena in Chancery on the defendant the Federal Oil and Development Company, a Delaware corporation, by delivering to and leaving with W. E. Chaplin, personally, then and there being the Secretary of State of the State of Wyoming, a true, and correct copy of said Subpoena in Chancery, in the city of Cheyenne, Laramie County, State of Wyoming, on the 8th day of June, 1922; that said defendant the Federal Oil and Development Company is a foreign corporation, and has failed to comply with the provisions of Sections 5044, 5045, 5046, of the Wyoming Compiled Statutes of 1920, in that it has no office in the State of Wyoming. nor any resident agent in charge thereof upon whom process against said corporation may be served, and that Charles W. Carlisle the resident agent formerly appointed by said defendant corporation is now a resi-
30 dent of the State of Colorado, and cannot now be found and is not now within the District of Wyoming.

HUGH L. PATTON, U. S. Marshal,
By L. C. Davis, Deputy Marshal.

Marshal's Fees.

Service, 1 persons, at $2.00 each	$ 2.00
Mileage, 221 miles at 6c. Going only	$13.26
1 Service, $2.00	$ 2.00
Total	$17.26.

Endorsed: Filed in the District Court on Jun. 8, 1922.

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31 (Motion of defendant, Federal Oil & Development Company, to dismiss.)

Comes now, Defendant, Federal Oil & Development Company, a Corporation, by its solicitors undersigned, and moves to dismiss the bill of complaint on file in the above entitled cause, upon the following grounds:

1. That said bill of complaint fails to state facts sufficient to constitute a valid cause of action in equity.

2. That it appears upon the face of said bill of complaint that the Plaintiff therein has been guilty of laches and that his alleged grounds for relief are barred by the limitations contained within the Act of Congress of February 25th, 1920

(Public No. 146), being an Act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the Public Domain and by the statutes of limitations of the State of Wyoming.

3. That it appears upon the face of said bill of complaint that a final determination of all matters alleged to be in controversy between the Plaintiff and those in privity with him, and Defendant, Federal Oil & Development Company and its predecessors in interest has been had before the Secretary of the Interior of the United States, and a final adjudica-
32 tion therein has been entered against all rights claimed by Plaintiff.

TYSON S. DINES,
PETER H. HOLME,
TYSON DINES, Jr.,
HAROLD D. ROBERTS,
PAUL P. PROSSER,
Solicitors for Defendant, Federal Oil and Development Company.

Thomas Hunter,
Of Counsel.

Endorsed: Filed in the District Court on Jun. 15, 1922.

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33 (Motion of defendant, Mountain and Gulf Oil Company, to dismiss.)

Comes now, Defendant, The Mountain and Gulf Oil Company by its solicitors undersigned, and moves to dismiss the bill of complaint on file in the above entitled cause, upon the following grounds:

1. That said bill of complaint fails to state facts sufficient to constitute a valid cause of action in equity.

2. That it appars upon the face of said bill of complaint, that the Paintiff therein, has been guilty of laches and that his alleged grounds for relief are barred by the limitations contained within the Act of Congress of February 25, 1920 (Public No. 146) being an Act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the Public Domain and by the statutes of limitations of the State of Wyoming.

3. That it appears upon the face of said bill of complaint that a final determination of all matters alleged to be in controversy between the Plaintiff and those in privity with him, and Defendant, The Mountain and Gulf Oil Company and its

predecessors in interest has been had before the Secretary of the Interior of the United States and a final adjudication therein, has been entered against all rights claimed by
34 Plaintiff.

TYSON S. DINES,
PETER H. HOLME,
TYSON DINES, JR.,
HAROLD D. ROBERTS,
PAUL P. PROSSER,
Solicitors for Defendant, The Mountain and Gulf Oil Company.

Thomas Hunter,
Of Counsel.

Endorsed: Filed in the District Court on Jun. 15, 1922.

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35 (Amendment to motion of defendant, Federal Oil & Development Company, to dismiss.)

Comes now defendant, Federal Oil and Development Company by its solicitors undersigned, and amends its motion to dismiss the bill of complaint heretofore filed in the above entitled cause, by adding to said motion to dismiss the following grounds therefor, to-wit:

That the United States of America is indispensable as a party defendant to the equitable and complete determination of the alleged cause of action set forth in said bill of complaint and that the United States of America has not and cannot be made a party thereto.

TYSON H. DINES,
PETER H. HOLME,
TYSON DINES, Jr.,
HAROLD D. ROBERTS,
PAUL P. PROSSER,
Solicitors for Defendant, Federal Oil and Development Company.

Thomas Hunter,
Of Counsel.

Endorsed: Filed in the District Court on Sep. 5, 1922.

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36 (Amendment to motion of Defendant, Mountain and Gulf Oil Company, to dismiss.)

Comes now defendant, The Mountain and Gulf Oil Company by its solicitors undersigned, and amends its motion to

dismiss the bill of complaint heretofore filed in the above entitled cause, by adding to said motion to dismiss, the following ground therefor, to-wit:

That the United States of America is indispensable as a party defendant to the equitable and complete determination of the alleged cause of action set forth in said bill of complaint and that the United States of America has not and cannot be made a party thereto.

TYSON S. DINES,
PETER H. HOLME,
TYSON DINES, Jr.,
HAROLD D. ROBERTS,
PAUL P. PROSSER,
Solicitors for Defendant, Mountain and Gulf Oil Company.

Thomas Hunter,
Of Counsel.

Endorsed: Filed in the District Court on Sep. 5, 1922.

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37 Notice of Hearing on Motions to Dismiss.

To the above named defendants, and each of them, and to Messrs. Tyson S. Dines, Peter H. Holme, Tyson S. Dines, Jr., Harold D. Roberts, and Paul P. Prosser, solicitors for said defendants, and to Thomas Hunter, Esq., of counsel:

You, and each of you, will please take notice that the plaintiff above named will on Monday, November 6, 1922, at the hour of 10 o'clock A. M. of said day, or as soon thereafter as counsel can be heard, at the court room of the above entitled court, in the City of Cheyenne, Wyoming, call up for hearing and determination by said court the motions to dismiss, and each of them, filed in this cause by the said defendants on the 15th day of June, 1922, together with the amendment to said motions filed in this cause by the defendants on the 5th day of September, 1922.

Dated at Cheyenne, Wyoming, this 28th day of October, 1922.

J. M. HODGSON,
Solicitor for Plaintiff.

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38 Due and personal service, by copy, of the foregoing notice of Hearing on Motions to Dismiss, is hereby admitted at Cheyenne, Wyoming, this 28 day of October, 1922.

TYSON S. DINES,
PETER H. HOLME,
TYSON S. DINES, Jr.,
HAROLD D. ROBERTS,
PAUL P. PROSSER,
Solicitors for Defendants.

Thomas Hunter,
Of Counsel.

Endorsed: Filed in the District Court on Oct. 28, 1922.

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39 (Order of argument on motions to dismiss.)

This cause comes on now to be heard on the motions of defendants to dismiss, and amendments to motions to dismiss, James M. Hodgson, Esquire, and Robert R. Stewart, Esquire, appearing as solicitors for complainant, and Harold D. Roberts, Esquire, Paul P. Prosser, Esquire, and Thomas Hunter, Esquire, appearing as solicitors for defendants.

And the argument herein not being completed, It Is Ordered by the Court that this cause be, and the same is hereby, continued to Wednesday, November 8, 1922, at nine thirty o'clock in the forenoon.

T. BLAKE KENNEDY,
Judge.

Endorsed: Filed in the District Court on Nov. 6, 1922.

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40 (Submission of motions to dismiss.)

This cause comes on now to be heard on the motions of defendants to dismiss, and amendments to motions to dismiss, and James M. Hodgson, Esquire, and Robert R. Stewart, Esquire, appearing as solicitors for complainants, and Harold D. Roberts, Esquire, Paul P. Prosser, Esquire, and Thomas Hunter, Esquire, appearing as solicitors for defendants, and is argued by counsel for the parties hereto, and by the Court taken under advisement.

It is further ordered by the Court that the parties hereto be, and they are hereby allowed, to and including the first

day of December, A. D. 1922, within which to file their briefs herein.

T. BLAKE KENNEDY,
Judge.

Endorsed: Filed in the District Court on Nov. 8, 1922.

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41 (Order, December 16, 1922, dismissing bill of Complaint.)

In the District Court of the United States for the District of Wyoming.

James M. Hodgson, Plaintiff,
No. 1273. vs. Civil.
Federal Oil and Development Company, a corporation, and The Mountain and Gulf Oil Company, a corporation, Defendants.

This cause having heretofore come on to be heard at this term of the court upon motion to dismiss the Bill of Complaint herein, and having been argued by counsel for the parties hereto and having been taken under advisement by the Court:

It Is Now Ordered by the Court that said motion to dismiss be, and the same is hereby, sustained, and said Bill of Complaint is hereby dismissed out of this court at the cost of the complainant to be taxed, to which order and ruling of the Court the complainant by his solicitor excepts.

T. BLAKE KENNEDY,
Judge.

Endorsed: Filed in the District Court on Dec. 16, 1922.

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42 (Decree.)

Saturday, December 16, 1922.

In the District Court of the United States for the District of Wyoming.

James M. Hodgson, Plaintiff,
No. 1273. vs. Civil.
Federal Oil and Development Company, a corporation, and The Mountain and Gulf Oil Company, a corporation, Defendants.

This cause having heretofore come on to be heard at this term of the Court upon motion to dismiss the Bill of Com-

plaint herein, and having been argued by counsel for the parties hereto and having been taken under advisement by the Court:

It Is Now Ordered by the Court that said motion to dismiss be, and the same is hereby, sustained, and said Bill of Complaint is hereby dismissed out of this court at the cost of the complainant, to be taxed, to which order and ruling of the Court the complainant by his solicitor excepts.

T. BLAKE KENNEDY,
Judge.

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43 Petition for Appeal.

To the Hon. T. Blake Kennedy, Judge of said Court:

The above named plaintiff feeling himself aggrieved by the final order dismissing the bill of complaint made and entered in this cause on the 16th day of December, A. D. 1922, does hereby appeal from said final order to the Circuit Court of Appeals for the Eighth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and he prays that his appeal be allowed, and that citation issue as provided by law, and that a transcript of the record, proceedings, and papers upon which said final order was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit, sitting at Denver.

Your petitioner further prays that the proper order touching the security to be required of him to perfect his appeal be made.

J. M. HODGSON,
R. P. STEWART,
Attorneys for Plaintiff.

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44 The petition granted and the appeal allowed this 31st day of May, 1923, upon giving bond conditioned as required by law in the sum of five hundred dollars.

T. BLAKE KENNEDY,
Judge of the United States District
Court for the District of Wyoming.

Endorsed: Filed in the District Court on May 31, 1923.

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45 Assignment of Errors.

And now comes James M. Hodgson, the plaintiff in the above entitled cause, and, in connection with his petition for appeal, assigns the following errors:

1. That the court erred in sustaining the defendant the Federal Oil and Development Company's motion and the amendment thereto to dismiss the bill of complaint and dismissing the bill.

2. That the court erred in sustaining the defendant The Mountain and Gulf Oil Company's motion and the amendment thereto to dismiss the bill of complaint and dismissing the bill.

3. That the court erred in rendering and entering its final order of December 16, 1922, dismissing the bill of complaint in this action, the said order being contrary to law.

4. That the court erred in rendering judgment upon the pleadings dismissing the bill of complaint in this action.

5. That the final order dismissing the bill of complaint herein is erroneous in holding that the bill of complaint does not state facts sufficient to constitute a cause of action.

6. That the final order dismissing the bill of complaint is erroneous in holding that the cause of action set forth in the bill of complaint is barred by the statute of limitations of the State of Wyoming.

7. That the final order dismissing the bill of complaint is erroneous in holding that the plaintiff and his grantors
46 had been guilty of laches in not sooner asserting their right and title to the property in controversy.

8. That the final order dismissing the bill of complaint is erroneous in holding that the cause of action set forth in the bill of complaint is barred by the six months statute of limitations contained in the Act of Congress of February 25, 1920, known as the Oil Leasing Act (41 Stat. 437).

9. That the final order dismissing the bill of complaint is erroneous in holding that there has been a final and binding adjudication of the matters and things set forth in the bill of complaint herein by the Secretary of the Interior of the United States, against all rights claimed by the plaintiff.

10. That the final order dismissing the bill of complaint in this action is erroneous in holding that the United States of America is an indispensable party defendant to the equitable

and complete determination of the cause of action set forth in the bill of complaint.

11. That the court erred in not overruling and denying the motions to dismiss, and each of them, and the amendments thereto, filed by the defendants in this action.

By reason whereof this plaintiff prays that said decree or order dismissing the bill of complaint herein may be reversed and this cause remanded with instructions to proceed in accordance with the law.

J. M. HODGSON,
R. P. STEWART,
Attorneys for Plaintiff.

Endorsed: Filed in the District Court on May 31, 1923.

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47 Bond on Appeal.

Know All Men By These Presents, That we, James M. Hodgson, as Principal, and the Fidelity and Deposit Company of Maryland, as Surety, are held and firmly bound unto the Federal Oil and Development Company and The Mountain and Gulf Oil Company, in the just sum of Five Hundred And No/100 ($500.00) Dollars, to be paid to the said Federal Oil and Development Company and The Mountain and Gulf Oil Company, their successors or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally by these presents.

Sealed with our seals, and dated this 23rd day of May, 1923.

Whereas, lately at the November, 1922, term of the above entitled court, in a suit depending in said court between James M. Hodgson, Plaintiff, and the Federal Oil and Development Company, and The Mountain and Gulf Oil Company, Defendants, a final order dismissing the bill of complaint was rendered in said action against the said James M. Hodgson, and the said James M. Hodgson having obtained an appeal to the United States Circuit Court of Appeals for the Eighth Circuit, to reverse the final order in the aforesaid suit, and a citation directed to the said Federal Oil and Development Company and The Mountain and Gulf Oil Company, citing and admonishing them to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of Denver, Colorado, sixty days from and after the date of said citation.

48

Now, the condition of the above obligation is such, that if the said James M. Hogdson shall prosecute his said appeal to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

J. M. HODGSON,

Sealed and delivered in presence of,

Countersigned for the State of Wyoming
By Harry B. Henderson, Resident Agent

(Seal) FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By Donald D. Sheib,
Attorney in Fact.

Attest

Ray J. Noone, Agent.

Approved this 31 day of May, 1923.

By T. Blake Kennedy, Judge.

Endorsed: Filed in the District Court on May 31, 1923.

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49 (Citation and admission of service.)

In the District Court of the United States for the District of Wyoming.

James M. Hodgson, Plaintiff and Appellant,
No. 1273. vs. In Equity.
Federal Oil and Development Company, a corporation, and The Mountain and Gulf Oil Company, a corporation, Defendants and Appellees.

The United States of America, to the Federal Oil and Development Company and The Mountain and Gulf Oil Company,—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of Denver, Colorado, sixty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the United States District Court for the District of Wyoming, wherein James M. Hodgson, is appellant, and you are appellees, to show cause, if any there be, why the final order and decree appealed

from should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, The Honorable T. Blake Kennedy, Judge of the United States District Court for the District of Wyoming this 31st day of May A. D. 1923.

T. BLAKE KENNEDY,
Judge of the District Court.

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50 Due and personal service, by copy, of the foregoing Citation on Appeal, is hereby admitted this 31st day of May, 1923.

TYSON S. DINES,
TYSON S. DINES, Jr.
PETER H. HOLME,
HAROLD D. ROBERTS,
PAUL P. PROSSER,
Solicitors for Defendants.

Thomas Hunter,
of Counsel.

Endorsed: Filed in the District Court on May 31, 1923.

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52 Praecipe for Transcript of Record.

To the Clerk of the District of the United States for the District of Wyoming:

The Clerk of this Court is hereby directed to prepare and certify a transcript of the Record in the above entitled case by incorporating the following parts of the record therein:

1. Bill of Complaint with endorsements.

2. Subpoena in Chancery with endorsements.

3. Motion to Dismiss of the defendant the Federal Oil and Development Company with endorsements.

4. Motion to Dismiss of the defendant The Mountain and Gulf Oil Company with endorsements.

5. Amendment to Motion to Dismiss of the defendant the Federal Oil and Development Company with endorsements.

6. Amendment to Motion to Dismiss of the defendant The Mountain and Gulf Oil Company with endorsements.

7. Notice of Hearing on Motions to Dismiss with endorsements.

8. Record of Hearing on Motion to Dismiss (2 orders) with endorsements.

9. Order dismissing Bill of Complaint with endorsements.

10. Journal Entry of Order Dismissing Bill of Complaint.

53 11. Petition for Appeal and Order allowing Appeal with endorsements.

12. Assignment of Errors with endorsements.

13. Bond on Appeal with endorsements.

14. Opinion of the Court.

15. Citation on Appeal with endorsements, and Proof of Service.

16. Praecipe for Transcript of Record with endorsements and Proof of Service.

Dated at Cheyenne, Wyoming, this 31st day of May, A. D. 1923.

J. M. HODGSON,
R. P. STEWART,
Solicitors for Plaintiff.

Due and legal service of the foregoing Praecipe for Transcript of Record by delivery to us of a due and correct copy of said Praecipe for Transcript of Record is hereby admitted at Cheyenne, Wyoming, this 31st day of May, 1923.

TYSON S. DINES,
TYSON S. DINES, Jr.,
PETER H. HOLME,
HAROLD D. ROBERTS,
PAUL P. PROSSER,
Solicitors for Defendants.

Thomas Hunter,
Of Counsel.

Endorsed: Filed in the District Court on May 31, 1923.

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54 (Clerk's Certificate to Transcript.)

United States of America,
District of Wyoming—ss.

I, Charles J. Ohnhaus, Clerk of the District Court of the United States for the District of Wyoming, do hereby certify

the above and foregoing to be a true, correct and complete transcript and copy of Bill of Complaint with endorsements, Subpoena in Chancery with endorsements, Motion to Dismiss of the defendant the Federal Oil and Development Company with endorsements, Motion to Dismiss of the defendant The Mountain and Gulf Oil Company with endorsements, Amendment to Motion to Dismiss of the defendant the Federal Oil and Development Company with endorsements, Amendment to Motion to Dismiss of the defendant The Mountain and Gulf Oil Company with endorsements, Notice of Hearing on Motions to Dismiss with endorsements, Record of Hearing on Motion to Dismiss (2 orders) with endorsements, Order Dismissing Bill of Complaint with endorsements, Journal Entry of Order Dismissing Bill of Complaint, Petition for Appeal and Order allowing Appeal with endorsements, Assignments of Errors with endorsements, Bond on Appeal with endorsements, Opinion of the Court, Citation on Appeal with endorsements and Proof of Service, and Praecipe for Transcript of Record with endorsements and Proof of Service, in Case No. 1273 Civil, James M. Hodgson, Plaintiff, vs. Federal Oil and Development Company, a corporation, and The Mountain and Gulf Oil Company, a corporation, lately pending in this Court.

Witness my hand and the seal of said Court at the City of Cheyenne in said district this 14th day of July, A. D. 1923.

Seal
U. S. Dist. Court
Dist. of Wyo.

CHARLES J. OHNHAUS,
Clerk of the District Court of the United States for the District of Wyoming.

Filed Jul 26, 1923, E. E. Koch, Clerk.

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55 (Opinion of the District Court.)

In the District Court of the United States for the District of Wyoming.

James M. Hodgson, Plaintiff,
#1273. vs. In Equity.
The Federal Oil & Development Company, et al., Defendants.

J. M. Hodgson of Cheyenne, Wyo., in person, and R. R. Stewart of Washington, D. C., Attorneys for Plaintiff.

Harold D. Roberts and Paul P. Prosser of Denver, Colo., Attorneys for Defendants.

Decided December 16, 1922.

Judge's Memorandum.

Kennedy, Judge.

The above entitled cause is a suit in equity to impress a trust in the nature of an undivided one-eighth interest upon a certain lease or the benefits accruing therefrom granted by the United States Department of the Interior to the defendant, Federal Oil & Development Company.

The bill is attacked by a motion to dismiss, alleging facts insufficient to constitute a cause of action, laches and a bar by the statute of limitations, a final determination of the matters involved by the Department of the Interior and the failure to join the United States as an indispensable party defendant.

Omitting the formal allegations of the bill designed to give the court jurisdiction, the statement of facts set forth which may be considered as pertinent to the disposition of the motion may be summarized as follows:

On January 11, 1887, eight natural persons located the O'Glase claim on the SW¼ of Section 13, township 40,
56 range 79, in what is now known as the Salt Creek field, then in the County of Carbon and now in the County of Natrona, in this State and District. The location was made under the placer mining laws, which were afterwards challenged as being ineffective for the location of oil lands, but by legislative enactment subsequently approved and confirmed. The requisite labor and development were performed upon the claim.

Among these eight locators was one George McManus, who subsequently died on the 16th day of September, 1901, leaving as his heirs at law, a widow, a daughter and a grandson, who were never residents of the State of Wyoming, with the exception of the grandson, who became a resident a short time before the commencement of this suit, and that these heirs did not know and had no knowledge or information leading to knowledge of the right, title and interest of the said George McManus in the lands in controversy until the date of the assignment hereinafter mentioned. In February, 1922, these heirs at law assigned all their rights in the property and premises to the plaintiff, who is a resident of this State and

whom the court recognizes as a lawyer admitted to practice in the courts of this State and this court.

On August 21, 1920, the defendant, Federal Oil and Development Company, filed an application for a lease of the above described lands as the successor in interest of the locators under the Act of February 25, 1920, known as the Mineral Leasing Act. On March 25, 1921, a lease to said defendant was recommended by the Commissioner of the General Land Office, which thereafter and on April 1st was ratified and confirmed by the Secretary of the Interior and issued to said defendant.

The bill alleges erroneous representations on the part of the applicant for the lease and sets out certain findings of the Commissioner and Secretary and particularly alleges errors of law committed by these officers in awarding the lease to the defendant company.

57 Among other things the Department of the Interior found that five of the locators in 1886 gave to one Cy Iba a power of attorney to locate lode and placer mining claims in the Rattlesnake mining district in the county of Carbon, Territory of Wyoming, which is the mining district in which the claim in controversy was then located, and that in 1884 a similar power of attorney was granted by some of the locators to said Iba and one Fales to do practically the same things. McManus was one of the locators executing the latter power of attorney. These powers of attorney, in addition to granting the right to the attorney to locate claims, gave the right to sell and convey said claims for their principals.

On February 18, 1890, the said Cy Iba made, executed and delivered a quit claim deed of an undivided one-half interest in the O'Glase claim to one Victoria A. D. Johnston, and on April 12, 1905, said Iba conveyed an undivided one-half interest in the claim to one Joseph H. Lobell. On February 16, 1907, Victoria A. D. Johnston, conveyed her undivided one-half interest to Frederick J. Lobell, who two days later conveyed this interest to Joseph H. Lobell, and who in turn, on August 26, 1915, conveyed the entire claim to the defendant, Federal Oil & Development Company.

The Department then held that the so-called powers of attorney granted to the said Cy Iba were deeds of trust by which Iba was authorized to sell and convey such claims as the O'Glase after same were located, and such deeds of trust were not revocable without the consent of Iba, which consent

he did not give to anyone, and that it followed that Iba had the authority to convey the legal title to the O'Glase claim, which he did in the manner before specified, all of which was shown by the abstract of title filed with the application, and that the applicant thereby became the holder of the fee title, and having surrendered the same to the United States was entitled to the lease which it subsequently received.

58 It appears that on September 27, 1909, that certain lands including those in controversy, were withdrawn from entry by presidential order which held the title of lands in statu quo until the passage of the leasing act.

Plaintiff alleges that the Department of the Interior committed an error of law in this respect, that the only power of attorney executed by McManus was the one in 1884, which was a joint power to Iba and Fales and that Fales not having joined in any transfer with Iba the attempted transfers were ineffectual and void in law, which transfers were held valid by the Department; and further, that the records did not show that the O'Glase claim was actually located by either the said Iba or Fales under the power of attorney, but alleges the fact to be that they were located by the locators themselves.

The bill further sets forth the powers of attorney and the deeds executed and delivered by Iba hereinbefore referred to and that said instruments were duly made matters of record in the county in which the land is located, which as to matters of fact substantially agree with those set forth in the findings of the Department.

Many points of law have been raised under the motion to dismiss by the defendants hereinbefore referred to, some of which are separate and distinct and others of which seem to blend into each other for the purpose of a fair consideration by this court and they will not therefore be given separate consideration in this memorandum.

One of the chief points of contention between counsel presented in the argument and in the exhaustive briefs filed was as to whether or not the grantees and their successors under the Iba deeds ever acquired a title which was adverse to McManus, his heirs and their assigns.

It is the earnest contention of counsel for the plaintiff that McManus being a co-tenant with other locators and the
59 defendant through Iba and his grantees being claimants under a conveyance, shown upon its face to be invalid in that it was insufficient to transfer the legal title of McManus,

that neither the defendant nor its grantors could ever acquire an adverse title, and that in effect the co-tenants and their grantors occupied a position of trust toward McManus out of which an adverse title never would accrue.

On the other hand, counsel for defendants maintain with equal earnestness that this rule in regard to co-tenancy and such trust relationship is not inflexible but varies according to the circumstances in each case, and in short that an adverse title begins from the date of the instrument which purports to convey the entire estate of all the co-tenants, even though in the first instance such conveyance in its strict and legal effect may not have been sufficient. In other words, that any conveyance purporting to grant away the entire title creates such a color of title as may eventually emerge in the form of an adverse title in the grantee.

There are authorities tending to sustain both contentions. After a careful examination of these authorities this court is of the opinion that the rule is not inflexible and that an adverse title as between co-tenants may be established, depending upon the individual circumstances of the case at hand. One of the controlling features in this instance seems to be what the instrument itself relied upon purports to convey. In the case of Elder vs. McClaskey, 70 Fed. 529, Judge Taft, then Circuit Judge, says:

"The extent of the estate purporting to be conveyed characterizes the entry and subsequent possession, and shows beyond doubt that they were made under a claim to the whole, and were with intent to oust all others asserting an interest. This is well settled by federal and state authorities." (Cases there cited.)

And further on says:

"Entering as he did under a claim to the fee of the tract in severalty, under deeds which purported to give such a title, we are of opinion that his possession was never in privity with claimants, as their tenant in common, or in subordination to them."

60 To the same effect is Pickens vs. Stout, 68 S. E. (W. Va.) 354.

In the case of Steele vs. Steele, 220 Ill. 318 (77 N. E. 232), the court says:

"If one tenant in common holds exclusive possession, claiming the land as his, and his conduct and possession are of

such a character as to give notice to his co-tenant that his possession is adverse, the statute of limitations will run."

Mr. Justice Storey, in the case of Prescott vs. Nevers, 19 Fed. Cas. No. 11,390, 4 Mason (C. C.) 326, says:

"I take the principle of law to be clear, that where a person enters into land by a recorded deed, his entry and possession are referred to such title; and that he is deemed to have a seisin of the land co-extensive with the boundaries stated in his deed, when there is no open adverse possession of the land so described in any other person."

To the same effect is also Joyce vs. Dyer, 75 N. E. (Mass.) 81.

Referring again to the case of Elder vs. McClaskey, supra, Judge Taft in explaining the policy of the law in holding that adverse titles should under certain circumstances accrue as between co-tenants, uses the following elucidating language:

"If a tenant in common, in order to make his possession adverse to a co-tenant, is obliged to seek the latter out and actually inform him of his intention, then it would become impossible to set the statute running against absent heirs, whose existence and whereabouts were unknown to the tenant, and whose heirship and interest in the property were unknown to themselves. It is certainly the policy of the law to require claims which have been latent for many years to slumber on. The disturbance of possession of long standing, if thus encouraged, would be, as said by Mr. Justice Grier in Roberts vs. Moore, 3 Wall. Jr. 292, 294, Fed. Cas. No. 11905, an intolerable mischief to the community. Cases can be stated, doubtless, where the fiduciary relation between the possessor and the owner is actual, and not created alone by the character of their respective titles, in which the dependence of the one upon the loyalty of the other is so complete that nothing but actual notice of the change from a subordinate to an adverse possession would suffice to set the statute running. In such cases it would seem that the relation must be of such a nature as affirmatively to discourage the owner from giving attention to conduct of the tenant. But the authorities cited show conclusively that no such rule obtains where the
61 fiduciary relation, if such it can be properly called, is created merely by the character of the respective titles, and not by an actual personal dependence of the owner upon the possessor, and that in such cases the owner is bound at his peril to take notice of acts of the possessor of such open

and notorious character, and so unmistakably indicative of an intention to exclude others from any interest in the land, that the world about, including the real owner, must be presumed to know and act upon them. Any other doctrine would make of a rule of law founded on the plainest principles of natural justice and equity an instrument of oppression, and a means of seriously impairing the peace of society. Indeed, in England so much trouble has arisen from the rule that the possession of one tenant in common is the possession of all that it is now provided by statute that the exclusive possession and enjoyment of the common property by one tenant shall be held to be adverse, and set the statute running without proof of ouster."

Accepting these decisions as establishing a well defined rule of law, it remains to be determined in this case whether the circumstances bring the plaintiff and his grantors within the rule.

The deeds of Iba acting as attorney in fact for the grantors purported upon their face to convey the entire estate of the locators of the claim. These deeds as well as the powers of attorney became public records and so remained for many years. The first deed was executed, delivered and recorded in the year 1890 and conveyed an undivided one-half interest, and the second deed executed, delivered and recorded in 1905 conveyed an undivided one-half interest in the O'Glase claim. The titles so granted were subsequently merged by mesne conveyances in the defendant, Federal Oil & Development Company. These deeds upon their face showed a conveyance of the entire estate of the locators in the O'Glase claim, and whether sufficient in the first instance to grant a complete legal title, either on account of the legal insufficiency of the powers of attorney to do the things specified or on account of only one attorney in fact having executed the conveyance, were sufficient to invest the grantees with a color of title when followed by recording of the deeds and the possession of the grantees and to charge the locators with a constructive notice of the claim of the grantees to the entire estate so as to effect the beginning of an adverse title. It has been held
62 in many cases that an adverse title may be established upon a mere conveyance showing color of title, and in our own State the Supreme Court has said in Bryant vs. Cadle, 18 Wyo. 64, at page 88 (104 Pac. 23, at page 28): "It is well settled that a hostile possession and claim may be based upon a void conveyance or other muniment of title."

In the case of Cameron vs. United States, 148 U. S. 301, the Supreme Court has defined the circumstances under which a color of title exists, which definition would seem to fairly well apply to the circumstances at bar.

If therefore an adverse title was established by the deeds from Iba, one of which was given in 1890 and the other in 1905, each for undivided one-half interest in the entire claim, it follows that under the statutes of Wyoming governing adverse possession, the title would become complete in ten years and would therefore accrue as to the entire property in 1915, some five or six years before the applicant for a lease filed its application. It therefore would also follow that the claim of plaintiff would be barred by the statute of limitations. The executive withdrawal order would not seem to interfere with the assertion of claim to title by the McManus heirs initiated prior to such order.

It might be said in passing that although the Department of the Interior did not make a specific conclusion of law in its decision on the lease in favor of the defendant upon the ground of an adverse title and the running of the statute of limitations, yet if the conclusions of this court are sound in this respect it proves that the decision of the Department was correct and the Department simply did not go so far as to outline all the legal conclusions which might have been drawn from the facts before it.

Closely akin to the question just discussed is the contention by counsel for defendants that the plaintiff has failed to allege sufficient reason and excuse for the inactivity and
63 failure and his assignors to make any claim to the rights here asserted until the lapse of so long a time. The excuse plead is that plaintiff's assignors were non-residents of the state and their lack of knowledge or means of knowledge in ascertaining their rights and interest in and to the property in controversy, which question is in its nature but a part and parcel of what this court considers to be the major question for determination raised by the motion to dismiss, viz: laches.

This particular question has been so fully discussed in a recent decision of the Court of Appeals of this Circuit in the case of Taylor vs. Salt Creek Consolidated Oil Co., filed November 15, 1922, in which the opinion was written by Judge Kenyon, that it would seem unnecessary for this court to go at length into the discussion of this phase of the case. The case cited involves the question of laches solely with respect to impressing a trust upon an oil lease secured from the gov-

ernment under the leasing act. One of the salient features accentuated by this recent authority is that the fluctuating character and value of so-called oil properties are such as practically to require a strict application of the doctrine as applied to this class of property. In that case Judge Kenyon has quoted with approval from another court the following language:

"This latter rule, requiring a suitor to plead and prove some adequate excuse for his silence and inaction in every instance where there has been an apparent want of diligence, is applied and enforced with great strictness in those cases where a person seeks to fasten upon another a constructive trust with respect to personal or real property, and in those cases, as well, where the property in controversy has rapidly appreciated in value, or has been improved by those in possession, or when the rights of numerous third parties have intervened and attached."

He also quotes from the case of Twin-Lick Oil Co. vs. Marbury, 91 U. S. 587, as follows:

"The fluctuating character and value of this class of property is remarkably illustrated in the history of the production of mineral oil from wells. Property worth thousands today is worth nothing tomorrow; and that which would today sell for a thousand dollars as its fair value, may, by the natural changes of a week or the energy and courage of des-
64 perate enterprise, in the same time be made to yield that much every day. The injustice, therefore, is obvious, of permitting one holding the right to assert an ownership in such property to voluntarily await the event and then decide, when the danger which is over has been at the risk of another, to come in and share the profit."

This decision clearly reflects what the attitude of the Federal Courts of this district should be in cases of this character in applying the rule of laches. The facts in the case as set forth in the bill clearly show that during all the time that the oil development was proceeding in this State nothing was done by the plaintiff's assignors to ascertain or determine their rights, if any, in the premises in controversy, although the records were open to them to ascertain after the death of McManus whether or not he had any interest in property in the State of Wyoming, which records would have shown them that he originally at least had an interest in an oil location and that someone subsequently had purported to transfer that interest under a power of attorney executed by him.

These record swere at least likewise a sufficient challenge to the rights of McManus to incite them to assert their interest in the property if they desired to do so, but they have sat quietly by and permitted someone else to bring into form and being a latent property right which the bill shows now to be of a value of approximately two million four hundred thousand dollars. As before stated herein, the only excuse plead for the failure to take affirmative action sooner is that plaintiff's assignors were non-residents of the State and had no actual knowledge or means of knowledge of their right or interest in the property. The records set forth in the bill at least show a means of knowledge open to them had they been reasonably diligent. Swift vs. Smith, 79 Fed. 709; Bacon vs. Chase, 50 N. W. (Ia.) 23; Redd vs. Brun, 157 Fed. 190; Williamson vs. Beardsley, 137 Fed. 467; Teall vs. Slaven, 40 Fed. 774, Id. affirmed 158 U. S. 172.

65 The views of this court herein expressed maye it unnecessary to consider the other points raised by counsel for defendants under the motion to dismiss, although several of them are persuasive, but those considered seem to be such as should control a court of equity in administering justice in its larger sense by disposing of the case upon those points which go to the merits of the controversy shorn of technicalities.

For the reasons stated, the bill will be dismissed at the costs of the plaintiff.

Endorsed: Filed in District Court on Dec. 16, 1922.

Transcript of record filed in U. S. Circuit Court of Appeals on Jul. 26, 1923. E. E. Koch, Clerk.

46 And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

(Appearance of Counsel for Appellant.)

United States Circuit Court of Appeals, Eighth Circuit.

James M. Hodgson, Appellant,
No. 6409. vs.
Federal Oil and Development Company, et al.

The Clerk will enter my appearance as Counsel for the Appellant.

J. M. HODGSON,
Cheyenne, Wyo.
Suite 501-503 First
National Bank Bldg.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Jul. 26, 1923.

(Appearance of Mr. Tyson S. Dines, Mr. Peter H. Holme, Mr. Harold D. Roberts and Mr. Paul P. Prosser as Counsel for Appellees.)

The Clerk will enter our appearance as Counsel for the Appellees.

TYSON S. DINES,
PETER H. HOLME,
HAROLD D. ROBERTS,
PAUL P. PROSSER,
1210 First National Bank Bldg.,
Denver, Colorado.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Aug. 16, 1923.

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47 (Appearance of Mr. Thomas Hunter as Counsel for Appellees.)

The Clerk will enter my appearance as Counsel for the Appellees.

THOMAS HUNTER.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Jan. 9, 1924.

(Order of Argument.)

September Term, 1924,
Monday, September 8, 1924.

This cause having been called for hearing in its regular order, argument was commenced by Mr. J. M. Hodgson pro se, continued by Mr. Harold D. Roberts and Mr. Paul P. Prosser for appellees, and the hour for adjournment having arrived further argument was postponed until tomorrow morning.

(Order of Submission.)

September Term, 1924,
Tuesday, September 9, 1924.

This cause having been called for further hearing argument was concluded by Mr. J. M. Hodgson pro se.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

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48 (Opinion.)

United States Circuit Court of Appeals Eighth Circuit.

December Term, A. D. 1924.

James M. Hodgson, Appellant,
No. 6409. vs.
Federal Oil and Development Company, et al., Appellees.

Appeal from the District Court of the United States for the District of Wyoming.

Mr. J. M. Hodgson (Mr. R. P. Stewart was with him on the brief), for appellant.

Mr. Harold D. Roberts and Mr. Paul P. Prosser (Messrs. Dines, Dines & Holme, were with them on the brief), for appellees.

Before Stone, Circuit Judge, and Munger and Miller, District Judges.

Miller, District Judge, delivered the opinion of the Court.

This case is here on appeal from an order of the lower Court dismissing appellant's bill for want of equity.

This bill filed May 26, 1922, sought to have appellees declared trustees for appellant to the extent of an undivided one-eighth interest in an oil and gas lease granted by the United States to the Federal Oil and Development Company covering the Southeast Quarter of Section Thirteen (13), Township Forty (40) North, Range Seventy-
49 nine (79) West, Natrona County, Wyoming, and for an accounting.

The facts alleged, omitting jurisdictional allegations and some details, are substantially as follows:

On January 11, 1887, the above described quarter section was vacant and unappropriated domain of the United States open to location, exploration and purchase under the placer mining laws then in force.

On that day George McManus, H. T. Snively, G. B. Hall, M. Iba, Perry Doan, William F. Ford, Martin Ashcraft and Sam Bedsaul, all qualified so to do, did associate themselves together for the purpose of locating, holding and working the said quarter section as an oil placer mining claim and did so locate said premises as an association oil placer mining claim by complying with all the laws, rules and regulations, both Federal and State, required to lawfully make such location, and thereafter did make discovery of valuable deposits of minerals, to-wit, petroleum and other mineral oils in and upon said premises.

That said claim is situated within the limits of the area embraced within the executive order of withdrawal issued by the President of the United States under date of September 27, 1909, which said order of withdrawal was never recalled or revoked prior to the 25th day of February, 1920.

That at the date of the executive order of withdrawal the said claim was a valid and subsisting mining claim under the mining laws of the United States.

That the interest and estate of George McManus, his heirs and this appellant, in said premises have never been forfeited or abandoned.

That George McManus died intestate on or about September 16, 1901, leaving as his sole heirs at law, the widow, Anna McManus, a daughter, Octavia Green, formerly Octavia McManus, and a grandson, Charles F. Trusty. The widow and daughter have never been citizens or residents of Wyoming and have never been within that State. The grandson

was never in the State until.....years immedi-
50 ately preceding the commencement of this action. None of them ever had any actual knowledge of the existence of said placer mining claim or of the interest or title of George McManus therein and no actual knowledge or information of any kind leading to knowledge of their rights in the premises until February 11, 1922, and shortly afterward. That none of said heirs of said George McManus, deceased, had or acquired until February 11, 1922, any actual knowledge of the right and privilege granted them by the Act of Congress approved February 25, 1920, known as the Oil Leasing Bill, to make application within six months after the approval of said Act for and to be granted an oil and gas lease on said premises or for an undivided one-eighth part thereof, and granting and confirming to them as owners of the mining title under pre-existing placer mining laws the preferential right to an oil lease theretofore located as oil placer mining claims under the laws of the United States, upon which there had been discovered oil in substantial quantities prior to said executive order of withdrawal.

That on the said 11th day of February, 1922, the said heirs at law for a valuable consideration paid to them by the appellant, by proper deeds of conveyance, duly sold and conveyed all their right, title and estate in said premises to the appellant herein, who is now the owner and holder thereof.

During his lifetime McManus never sold, conveyed or encumbered his interest in said property, nor did any other person lawfully authorized so to do, ever sell, assign or convey the interest of said McManus in said premises, or any part thereof, to any person or corporation whatever.

That on March 11, 1884, George McManus, Perry Doan, Sam Bedsaul, Scott Morford, James McFarland, William Hudson and William Meyers gave to Shepard Fales and Cy Iba a Power of Attorney to jointly locate for said principals oil placer mining claims in Carbon County, then territory of Wyoming, now Natrona County, Wyoming, and delegated the power to said Fales and Iba to jointly sell and convey as agents of said prinicpals such placer mines as might be located by them as attorneys in fact for their said principals.

This Power of Attorney was never executed by Fales and Iba, but Cy Iba did attempt to exercise it on February
51 18, 1890, by executing a deed as the pretended attorney in fact of McManus and his co-locators of the said claim, purporting to convey to one Victoria A. D. Johnson

an undivided one-half interest in said premises. Fales did not join in this deed.

In March, 1900, Ashcraft and Bedsaul conveyed to Cy Iba their interest in said premises.

On April 12, 1905, Cy Iba, by a quit-claim deed stating on its face that it conveyed an undivided one-half interest, conveyed his interest to Joseph H. Lobell.

On February 16, 1907, Victoria A. D. Johnson, by quit-claim deed purporting on its face to convey an undivided one-half interest in the premises, conveyed to Frederick J. Lobell her interest in said premises.

Two days later by similar quit-claim deed Frederick J. Lobell conveyed the same to Joseph H. Lobell, his brother.

On August 16, 1915, Joseph H. Lobell conveyed all his interests thus received to the appellee, the Federal Oil and Development Company.

On May 15, 1918, the Federal Oil and Development Company applied for mineral patent to the premises. The application was adversed by the United States and the application withdrawn on March 25, 1920, about one month after the passing of the Oil Leasing Act, approved February 25, 1920.

In considering that application for a mineral patent the General Land Office found as a matter of law that George McManus owned at that time an undivided one-sixteenth interest in the said placer mining claim, but afterwards, on the application of the appellee, the Federal Oil and Development Company for the oil lease in question here, reversed that decision and held that all of the title of McManus had passed to the Federal Oil and Development Company by purchase.

That in so holding and granting the said lease to the Federal Oil and Development Company the Commissioners of the General Land Office and Secretary of the Interior mistook, misconstrued and misapplied the law applicable to undisputed facts before them, and by reason of such mis-
52 take, misconstruction and misapplication of the law applicable thereto, granted the said oil and gas lease to said appellee, the Federal Oil and Development Company.

That the appellees, and each of them, had full knowledge and notice, actual and constructive, of the claim, right, title, interest and estate of the said George McManus, his heirs, and their successors in interest in and to an undivided one-

eighth interest in said premises and the oil contents thereof, and of their right under the law to an undivided one-eighth interest to any oil and gas lease of said premises that might be granted by the United States under the provisions of the Act of Congress approved February 25, 1920.

That appellant's grantors at the date of said lease were and this appellant is now a co-tenant of the said appellees, and each of them, in said leased premises and leasehold under said oil and gas lease granted to the said appellee, the Federal Oil and Development Company, and is entitled to an undivided one-eighth interest in and to the said oil and gas lease and the oil extracted therefrom, subject to the deduction and payment of the cost and expense of development, operation, production and the payment of the royalty to the United States. That said appellees hold any and all oil that has heretofore been and may hereafter be produced and sold from said premises as trustees for this appellant; that the appellees are in actual possession of said premises under said lease and now engaged in extracting oil therefrom in large quantities, selling the same and appropriating to their sole use the net proceeds of said oil and excluding the appellant from any interest or share therein and refusing to recognize the rights of the appellant therein. That appellant offers to do equity in the premises and is willing to do and perform all acts and things that may be required of him by the Court as a condition to granting the relief sought in this action conformable to the rules and practice of equity.

On August 21, 1920, the Federal Oil and Development Company applied for an oil and gas lease to the premises under the provisions of Section 18 of the Act of Congress of February 25, 1920, and those proceedings culminated in the issuance of an oil and gas lease to the appellee, the Federal Oil and Development Company on March 25, 1921, which company on April 28, 1921, assigned a fraction thereof to the appellee, the Mountain and Gulf Oil Company.

53 Appellant prays judgment that he be decreed to be the owner of an undivided one-eighth interest in and to said leased premises and of an undivided one-eighth interest in all petroleum, oil, gas and other mineral contents of said premises for and during the term of the lease, renewals and extensions thereof, and of an undivided one-eighth interest in all oil extracted and produced therefrom by the appellees as trustee for the appellant. That appellees be ordered to execute and deliver to appellant a proper instrument of assignment conveying an undivided one-eighth interest in and

to said oil and gas lease, and appellees be ordered to account to appellant for all oil produced from said leased premises or the proceeds thereof.

To this bill appellees filed identical motions to dismiss on the following grounds:

1. That the bill fails to state facts sufficient to constitute a cause of action;

2. That the appellant has been guilty of laches;

3. That the relief is barred by the limitations contained within the Act of Congress of February 25, 1920;

4. The statutes of limitations of the State of Wyoming;

5. A final determination and adjudication of all matters in controversy between the appellant and the appellees by the Secretary of the Interior of the United States against all rights claimed by appellant; and

6. That the United States is an indispensable party to the action.

On the 16th day of December, 1922, after argument the Court sustained said motions and entered its order dismissing the said bill, to which order the appellant duly excepted.

Appellant alleges and specifies error on the part of the trial Court in sustaining said motions on each and every ground thereof.

Appellant's contention is that the land Commissioner and Secretary of the Interior misapplied, mistook and misconstrued the law applicable to the facts before them in finding and concluding as a matter of law that the several
54 conveyances set forth in appellant's bill conveyed to and vested in the appellee, the Federal Oil and Development Company, the interest and estate of George McManus in the premises described about August 26, 1915, and that the mining title to said premises was not in issue, and further that the title held and possessed by the appellee, the Federal Oil and Development Company, at the date of its application for the lease in question was sufficient in law to entitle it to the lease issued under the provisions of law applicable thereto, and that the quit-claim deed of the Federal Oil and Development Company to the United States conveyed and relinquished to the United States the interest and estate of George McManus, and that it was by reason of such misconstruction and misapplication of the law that the lease in

question was granted to the said appellee; that as a matter of fact and as a matter of law it appears from the bill that prior to and on the date of appellee's, the Federal Oil and Development Company's, application for and the date of the granting to said appellee by the United States of the oil and gas lease in question, appellant's grantors and appellee, the Federal Oil and Development Company, were co-tenants of the premises described in his bill, appellant's grantors owning an undivided one-eighth interest therein. That because of said co-tenancy the rights, interests and estate acquired by the appellee, the Federal Oil and Development Company, under said lease inured to the benefit of all co-tenants, and, therefore, appellant as owner of the McManus undivided one-eighth interest in said premises is entitled to have said lease impressed with a trust to that extent.

It is not pretended that the alleged mistakes of law set forth in the bill invalidates the lease or prevents the passing of the title to the lessee. The contention is that the facts alleged are sufficient in equity to justify a Court of Equity to impress the lease with a trust in favor of appellant.

Section 18 of the Oil Leasing Act, approved February 25, 1920, provides the sole conditions upon which a lease under any circumstances could have been issued to appellant or his predecessors. The applicable portion of that section is as follows:

"That upon relinquishment to the United States, filed in the General Land Office within six months after the approval of this Act, of all right, title, and interest claimed and possessed prior to July 3, 1910, and continuously since by
55 the claimant or his predecessor in interest under the pre-existing placer mining law to any oil or gas bearing land upon which there has been drilled one or more oil or gas wells to discovery embraced in the executive order of withdrawal issued September 27, 1909, * * * and upon payment as royalty to the United States of an amount equal to the value at the time of production of one-eighth of all the oil or gas already produced * * *, shall be entitled to a lease thereon from the United States for a period of twenty years. * * * All leases hereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interest may appear. * * *"

Section 32:

"That the Secretary of the Interior is authorized to prescribe the necessary and proper rules and regulations and to

do any and all things necessary to carry out and accomplish the purposes of this Act."

Section 24½, Regulations of the Secretary of the Interior, under date of March 11, 1920, provides:

"All proper parties to a claim for relief under Sections 18, 19 or 22 of the Act, should join in the application, but, if for any sufficient reason that is impracticable, any person claiming a fractional or undivided interest in such claim may make application for a lease or permit, stating the nature and extent of his interest, and the reason for non joinder of his co-owner or co-owners. In cases where two or more applications are made for the same claim or part of a claim, leases or permits will be granted to one or more of the claimants, as the law and facts shall warrant and shall be deemed just."

It, therefore, appears that before appellant or his predecessors in interest would be entitled to any lease from the Government for any interest in said premises, he or they must, within six months after February 25, 1920, have relinquished to the United States all their right, title and interest claimed or possessed prior to July 3, 1920, and continuously since by such applicant or his predecessors in interest under the pre-existing mining law to any oil or
56 gas bearing land embraced in the executive order of withdrawal of September 27, 1909, and have paid to the United States as royalty an amount equal to the value at the time of production of one-eighth of all the oil or gas already produced. Neither compliance or attempted compliance with such conditions are alleged or pretended but the bill expressly negatives such facts. It is, however, alleged in the bill that appellant's grantors were without actual knowledge of the provisions of Section 18 of the Leasing Act until February 11, 1922, and appellant argues that such lack of actual knowledge in some equitable manner operated to suspend the six months limitation provided for in said Act.

We think a sufficient answer thereto is that the statute makes no such exception; but see Madden vs. Lancaster County, 65 Fed. 188, 194-5; U. S. vs. Missouri Pac. Ry. Co., 213 Fed. 169-173.

The question then under the third ground of the motions is narrowed to whether the appellant may impose a trust on a leasehold that neither he nor his grantors at any time were or now are entitled to receive, or any part thereof, from the lessor.

We think the law on this question is well settled. The rule is aptly stated in Anaker vs. Gunsburg, and others, 246 U. S. 110, where it is said:

"In order to maintain a suit of this sort the complainant must establish not only that the action of the Secretary was wrong in approving the other lease, but that the complainant was himself entitled to an approval of his lease, and that it was refused to him because of an erroneous ruling of law by the Secretary."

See also Duluth & Iron Range Railroad Co. vs. Roy, 173 U. S. 587; Bohall vs. Dilla, 114 U. S. 47.

Because the bill fails to allege compliance or an attempt to comply with the requirements of Section 18 of the Act of Congress approved February 25, 1920, it does not state a cause of action in equity and, therefore, properly dismissed for want of equity under the third ground of the motions to dismiss.

That being true, other questions raised and argued do not require our consideration.

57 The order of the lower Court is Affirmed.

Filed March 28, 1925.

Stone, Circuit Judge, dissenting.

This is a bill by appellant, Hodgson, against the Federal Oil and Development Company and the Mountain and Gulf Oil Company to have them declared trustees for him of his one-eighth interest in the oil and gas lease covering certain public land in Wyoming, and which was made under the so-called "Oil Leasing Act" (Feb. 25, 1920, 41 St. L. 437). Appellees filed identical motions to dismiss which, as amended, were based upon the grounds of insufficiency of allegations of fact, laches, bar by the limitations of the "Oil Leasing Act" (Sec. 18), bar by limitations under the statute of the State of Wyoming, res adjudicata by determination of the Secretary of the Interior, and lack of necessary party defendant (The United States). The trial court handed down a memorandum opinion wherein, without expressing any decision as to other points raised by the motions, it determined that the bill should be dismissed because barred by the statute of limitation of the State of Wyoming and because of laches. From a decree dismissing the bill, this appeal is brought.

The essential allegations of the bill, in so far as the motions to dismiss are concerned, are as follows:

On January 11, 1887, eight natural persons located the O'Glase claim on the SW¼ of Section 13, Township 40, Range 79, in what is now the County of Natrona, Wyoming. The location was made under the placer mining laws. The requisite labor and development were performed upon the claim, up to and including the year 1920.

Among these eight locators was George McManus, who subsequently died in 1901, leaving as his heirs at law, a widow, a daughter and a grandson, who were never residents of the State of Wyoming, with the exception of the grandson, who became such a short time before the commencement of this suit. These heirs did not know and had no information leading to knowledge of the right, title or interest of the said George McManus in the lands in controversy until about the date of the assignment hereinafter mentioned. In Feb-
58 ruary, 1922, these heirs at law assigned all their rights in the property and premises to the plaintiff, who is a resident of Wyoming. The requisite discoveries, work and possession of this claim were made by and remained continuously in McManus and his co-locators, and they became entitled to a patent therefor under the terms of Section 2332 of the Revised Statutes and the Act approved February 11, 1897 (29 Stat. L. 526). This claim was situated within the area embraced by the executive order of withdrawal, dated September 27, 1909, and that said order was not withdrawn or revoked until the Oil Leasing Act of February 25, 1920. At the date of said withdrawal order, this mining claim was a valid and subsisting placer claim under the statutes of the United States, and the property of George McManus and his co-locators. The rights of McManus and his heirs therein have never been transferred, forfeited or abandoned except as assigned to appellant.

On August 21, 1920, the defendant, Federal Oil and Development Company claiming as the successor in interest of the locators) filed an application for a lease of the above described lands under the Oil Leasing Act. On March 25, 1921, a lease to said defendant was recommended by the Commissioner of the General Land Office and, on April 1, was ratified and confirmed by the Secretary of the Interior and was issued to said defendant as of August 21, 1920.

Further, the bill alleges erroneous representation on the part of the applicant for the lease and sets out certain findings of the Commissioner and Secretary and particularly alleges errors of law committed by these officers in awarding the lease to the defendant company.

Among other things, it is alleged that the Department of the Interior found that five of the locators in 1886 gave to one Cy Iba a power of attorney to locate lode and placer mining claims in the Rattlesnake mining district in the County of Carbon, Territory of Wyoming (the mining district in which the claim in controversy was then located) and that in 1884 a similar power of attorney was granted by some of the locators to said Iba and one Fales to do practically the same things. McManus was one of the locators executing the latter power of attorney. These powers of attorney, in addition to granting the right to the attorney to locate claims, gave the right to sell and convey said claims for their principals.

59 On February 18, 1890, Cy Iba executed and delivered a quit claim deed of an undivided one-half interest in the O'Glase claim to Victoria A. D. Johnson, and on April 12, 1905, Iba conveyed an undivided one-half interest in the claim to Joseph H. Lobell. On February 16, 1907, Victoria A. D. Johnson, conveyed her undivided one-half interest to Frederick J. Lobell, who two days later conveyed this interest to Joseph H. Lobell, and who in turn, on August 26, 1915, conveyed the entire claim to the defendant, Federal Oil and Development Company.

The Department then held that the so-called powers of attorney granted to Cy Iba were deeds of trust by which Iba was authorized to sell and convey claims of the character of the O'Glase after they had been located; and such deeds of trust were not revocable without the consent of Iba, which consent he did not give to anyone, and that it followed that Iba had the authority to convey the legal title to the O'Glase claim, which he did in the manner before specified, all of which was shown by the abstract of title filed with the application, and that the applicant thereby became the holder of the fee title and, having surrendered the same to the United States, was entitled to the lease which it subsequently received.

Plaintiff alleges that the Department of the Interior committed an error of law in that the only power of attorney executed by McManus was the one in 1884, which was a joint power to Iba and Fales and that Fales not having joined in any transfer with Iba, the attempted transfers were ineffectual and void in law, which transfers were held valid by the Department; and further, that the records did not show that the O'Glase claim was actually located by either the said Iba or Fales under the power of attorney, but alleges the fact to

be that they were located by the locators themselves. It is alleged that in the letter and decision of the land commissioner it was found that the Federal Company had, on May 15, 1918, filed mineral application #016998, Douglas Series, for said land and on December 8, 1919, adverse proceedings had been ordered therein, but that such application was withdrawn and the case closed, March 25, 1920. It alleges that Fales never joined with Iba nor was named as a grantor nor in any way joined in the above two deeds by Iba; and that the deeds by Iba were executed by him in his sole behalf and not as attorney in fact for McManus or any other of his co-loca-
60 tors; and that this character of the Iba deeds and the lack of co-operation therein by Fales was clear upon the face of the deeds themselves and that no other conveyances even purporting or claiming to convey the interest of George McManus are in existence. It is claimed that these deeds by Iba, which constitute the sole basis of appellees' claim, conveyed no part of McManus' interest in the placer claim; that the adjudication to the contrary by the Secretary of the Interior was erroneous as matter of law on the facts and documents before him; that the sole right of the Federal Company to the lease rested upon its allegation of ownership of the placer claim; that the procurement of the lease upon this basis would inure to all owners of the placer claim in proportion to their interest therein; that it would hold such lease as trustee for such owners; that one of such owners, being a co-tenant in the placer claim, is appellant as the successor of the McManus interests, amounting to one-eighth of the whole.

The bill offers to do equity and asked a declaration of this one-eighth interest and an accounting.

I.

Logically the first ground for attack upon the bill which should be considered is whether there is an absence of necessary parties. It is strongly urged that the United States is an indispensable party because Section 30 of the Oil Leasing Act provides "that no lease issued under the authority of this Act shall be assigned or sublet, except with the consent of the Secretary of the Interior", and that an assignment of an undivided one-eighth interest in the lease is prayed for in the bill. It is most probable that the matter primarily intended to be covered by this statutory provision was a voluntary change by the lessee of his relations to the lease through assignment or subleasing. However, the situation is not sim-

ilar to that where a patent has been issued to public lands and the dispute arises between the patentee and someone else as to the right to the land and patent. In the latter case, the government has parted with all interest in its property and is not further concerned, in a proprietary sense, in the ownership. The contest is purely between private parties and it in no way affects the government how that contest may terminate. In the matter of oil leasing under this Act,
61 however, there is another situation. Here the government has not parted with its property. It has merely contrateed away a right of exploitation for a limited period, this exploitation to be done (according to the terms of section 32 of the Act) under necessary and proper rules and regulations safeguarding the interest of the government and securing the performance of the contract. The Act gives a preference in application for leases to those having existing placer claim rights to the land in question; but even such preferred persons cannot secure such leases and the benefit of the Act unless and until they comply with the "necessary and proper rules and regulations" authorized by section 32 of the Act. While the courts may decide who is entitled to preference (as placer claim locators) under the Act and may correct the Department where its decisions in that respect are erroneous in matters of law, yet the person thus found to be entitled to this preference is in no better position than if his right had been freely recognized by the Department in the first place. He must still qualify, under such Department rules and regulations, before he can occupy the status and secure the benefits of a lessee. While not advised in this regard as to what regulations, if any, the Department had or has in force governing these leases, yet the power and authority given by the Act to prescribe such and the direct requirement, in the Act itself, that no assignment shall be made without the consent of the Department clearly evinces the legislative concern in the control by the Department of these leases and the operation under them so that the public rights may be safeguarded and enforced. On the other hand, it may be said, Section 18 provides that,

"All leases hereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear, subject, however, to the same limitation as to area and acreage as is provided for claimant in this section."

The words "or otherwise" in the above quotation would seem broad enough to cover a claim that the lessor was a

trustee. This matter is not free from doubt but I am inclined to think that the fact that the interest claimed by appellant is an undivided interest in minerals in place, is a material and, possibly, a determinative consideration. If the appellant is, as he alleges, a tenant in common in such
62 property, the right would exist, if the property were privately owned, in any tenant to exploit it, provided he accounted to his co-tenants for their shares of the net results. It would be possible legally to segregate and divide the undivided interest in such property when and in so far as mined. If the property involved, instead of being privately owned, is a part of the public domain which can be exploited only as allowed by law, and if one of the co-tenants has secured this exclusive right to exploitation it would seem that an accounting for the net results would not in any wise affect the lessee or the government in its relation thereto and that a lease of this character would, in its very nature, be indivisible and therefore unassignable in part.

If appellant, as a co-tenant, wished to exploit his property, he might or might not be able to obtain a lease to do so. But if it were possible for him to so operate and his one-eighth interest were freely recognized, he would yet have to account for seven-eighths of his net results from production just the same as he is now asking appellees to account for and recognize his right to one-eighth of their net production.

Appellant's prayer is clearly in the alternative and intended to cover situations both of a trust relation and of a co-tenant relation. My judgment is that his allegations, if establishing a co-tenancy in the placer mining claim, could result only in establishment of a trust relation as to this lease. If this be true, and the result of that relation is solely that appellees shall account to him for one-eighth of the net resuts of operations under the lease, I do not see how the government is interested or affected by this controversy. Therefore, I think the United States is not a necessary party.

II.

It is next contended that the award of the government lease under the Oil Leasing Act was an adjudication In Rem, binding upon the courts. I cannot accept this contention. It may be conceded that the Department is given authority to determine questions of fact as to who comes within the various terms and classifications of the Act but the Department is not

permitted to mistake the law which it is authorized to
63 apply. It is always allowable for a dissatisfied party to have the proper court examine the action of a department to ascertain whether the interpretation and application of the law by it has been correct. Appellant challenges this action of the Department in that respect, alleging that upon the facts before the Department and upon which it acted and which he does not challenge, it misapplied the law. This he is entitled to have examined.

III.

It is also claimed that the cause of action is barred by the limitation contained in Section 18 of the Oil Leasing Act, wherein it is provided that such placer claimants may "upon relinquishment to the United States, filed in the General Land Office within six months after the approval of this Act, of all right, title and interest * * * be entitled to a lease thereon * * *". The claim is that as neither appellant nor his predecessor made any assertion of their rights within the above six-months period, they are barred from any participation or interest in the lease or its proceeds. I think that such is not the meaning of the statute. If appellant were seeking to obtain a lease from the government he might well be barred by this language; but what he is asking is not something additional from the government but to have declared and enforced an interest, which he claims to have, in a lease granted by the government within the six-months period. The purpose of the above limitation seems to be to fix a period within which those claiming existing placer mining rights may assert them and establish their preference to leases over others who might want to apply for permits, under this statute, to explore land on the public domain.

IV.

It is claimed that the bill is, under its allegations, barred by the statute of limitations of the State of Wyoming. I do not undertsand that federal courts are bound by state statutes of limitations in actions in equity, although such state statutes may have much bearing on the matter of laches as to influence federal courts in equity cases often to act in analogy with such statutes. Ide vs. Carpet Co., 115 Fed. 137, 148 (this court). This disposes of the contention that the court is bound by the statute of Wyoming and that statute becomes pertinent only in connection with the next ground which is laches.

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V.

It is strongly contended that this bill is barred by laches. The material allegations of the bill bearing on this contention seem to be as follows: Appellant alleges that he and his co-locators were in possession and did the usual work required by the placer mining claim laws from the location of the claim in 1887 down to the present time and that they were in open, notorious and adverse possession down to and including the time when the land was withdrawn by executive order, and that order was not recalled until February 25, 1920, when the Oil Leasing Act was enacted. The conveyances made by Cy Iba of an undivided one-half interest in the claim in 1890 can hardly be urged as constituting any color of title to the one-eighth undivided interest of McManus. Particularly as five of the other locators had given Iba a power of attorney in 1886 while McManus had never given such authority except to Iba and Fales jointly. Had this been the only conveyance made by Iba it must be presumed that it would have been of those undivided parts which he had authority to convey rather than of that part which he, acting alone, could not legally convey. Therefore, the bill does not allege any fact which even in its most unfavorable interpretation, could be construed as adversely affecting the title or interest of McManus until Iba undertook to convey a second one-half undivided interest to Joseph H. Lobell on April 12, 1905. But these conveyances alone, if Iba had no legal authority to transfer the McManus interest, could not affect that interest unless there had been such an assertion of title by the grantees as to amount to adverse possession or to require opposing action by McManus to prevent laches in the assertion of his rights. The bill alleges that McManus and his co-locators had possession at all times and particularly to the time when the withdrawal proclamation became effective. While I have not been able to procure the withdrawal proclamation to ascertain just what effect it woud have upon the exercise of the rights of placer claimants to land covered by the proclamation, yet I apprehend it must have prevented, from the time it became effective until the passage of the Oil Leasing Act (from 1909 to February 25, 1920), any exercise of rights in respect to mineral claims on such land. If that be true, there could, during that period, be no possession or adverse possession by any one in so far as
65 placer minerals were concerned and that period should be regarded as a suspension of rights and duties of rival claimants in respect to such property. The only indi-

cation in the bill of any action by either party during that period are the broad statements that McManus and his co-locators kept up their work and kept possession continuously; and the statements quoted from the letter and decision of the Land Commission in connection with the granting of the lease to the effect that,

"On May 15, 1918, the aforesaid applicant company filed mineral application #016998, Douglas series, for said land, and by letter 'FS' of December 8, 1919, it was ordered that adverse proceedings be had in said case, but the application was withdrawn, and by letter 'FS' of March 25, 1920, the case was closed."

The further statements in the same document that,

"The status of the fee title to the claim was considered by this office in the letter 'FS' of December 8, 1919, in regard to the mineral application aforesaid, and it was held that the title in the land was as follows:

Federal Oil and Development Company	10/16	interest
M. Iba	1/16	"
H. T. Snively	1/16	"
George McManus	1/16	"
Perry Doan	1/16	"
William F. Ford	1/16	"
George B. Hall	1/16	" ."

I think we have no right to conclude from the bill that there was any adverse possession on the part of the appellees or their predecessors (Victoria A. D. Johnson and the Lobells) during this period or that there was an assertion of rights which would call into play a necessity for McManus or his heirs asserting themselves until application of the Company May 15, 1918, as quoted above; and the adverse proceedings declared in that case seem to have continued until March 25, 1920, when the case was closed. No further movement on the part of appellees is evidenced in the bill until the application made on August 21, 1920, for this lease. The
66 granting of the lease was not approved by the Secretary until April 1, 1921, and this bill was filed May 26, 1922.

A very essential element in laches is knowledge. The allegation of the bill is that there was no knowledge on the part of the heirs of McManus of any of their rights until February 11, 1922, about three months before the bill was filed. When it is considered that this claim was located is 1887, that Mc-

Manus died in 1901, that the land was withdrawn by the Government from 1909 to 1920 and that development therein was suspended from 1909 until after April 1, 1921 (the date of the lease) and when it is borne in mind that none of the heirs lived near the property or in the state, I am doubtful if such laches appear on the face of the bill as would justify its dismissal. It may be that when issues are joined and evidence introduced this will be shown but that is not now before us.

I think the decree of dismissal should be reversed with instructions to set aside the order of dismissal and reinstate the case for such action as counsel may be advised.

Filed March 28, 1925.

67

(Decree.)

United States Circuit Court of Appeals, Eighth Circuit.

December Term, 1924,

Saturday, March 28, 1925.

James M. Hodgson, Appellant,
No. 6409. vs.
Federal Oil and Development Company and The Mountain and Gulf Oil Company.

Appeal from the District Court of the United States for the District of Wyoming.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Wyoming and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the order of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed with costs; and that the Federal Oil and Development Company and The Mountain and Gulf Oil Company have and recover against James M. Hodgson the sum of Twenty Dollars for their costs herein and have execution therefor.

March 28, 1925.

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68 (Petition for Appeal to Supreme Court, U. S.)

To the Hon. Kimbrough Stone, Circuit Judge, the Hon. Andrew Miller, District Judge, and the Hon. Thomas C. Munger, District Judge, sitting as the Circuit Court of Appeals for the Eighth Circuit in this above entitled cause:

The above named appellant feeling himself aggrieved by the judgment rendered and entered herein by this Court on March 28, 1925, affirming the final order of the United States District Court for the District of Wyoming, made and entered by that Court in this cause on December 16, 1922, dismissing on the merits the bill of complaint in this action, does hereby appeal from said judgment of the United States Circuit Court of Appeals for the Eighth Circuit, rendered and entered herein on March 28, 1925, affirming the order of said District Court, to the Supreme Court of the United States, and prays that an appeal may be allowed to him from said judgment of the United States Circuit Court of Appeals for the Eighth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said final judgment of this Court was based, duly authenticated, may be sent to the Supreme Court of the United States sitting at Washington, D. C.

Your petitioner further prays that the proper order touching the security to be required of him to perfect his appeal be made.

R. P. STEWART,
J. M. HODGSON,
Solicitors for Appellant.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Jun. 13, 1925.

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69 (Assignment of Errors on Appeal to Supreme Court, U. S.)

And now comes James M. Hodgson, the appellant in the above entitled cause, and, in connection with his petition for appeal, assigns the following errors:

1. That the United States Circuit Court of Appeals erred in rendering and entering its judgment of March 28, 1925, affirming the final order of the District Court of the United States for the District of Wyoming, entered on December 16,

1922, dismissing the bill of complaint in this action, the said judgment being contrary to law.

2. That the judgment of the United States Circuit Court of Appeals for the Eighth Circuit rendered and entered herein on March 28, 1925, is erroneous in holding that the cause of action set forth in the bill of complaint herein is barred by the six months statute of limitations contained in the Act of Congress of February 25, 1920, known as the Oil Leasing Act, 41 Stat. at L. 437.

3. That the United States Circuit Court of Appeals erred in not finding the issues for the appellant.

4. That the United States Circuit Court of Appeals erred in not sustaining appellant's first assignment of error on the appeal from the District Court, which assignment is as follows, to-wit: (1) That the court erred in sustaining the defendant the Federal Oil and Development Company's motion and the amendment thereto to dismiss the bill of complaint and dismissing the bill.

5. That the United States Circuit Court of Appeals erred in not sustaining appellant's second assignment of er-
70 ror on the appeal from the District Court, which assignment is as follows, to-wit: (2) That the court erred in sustaining the defendant The Mountain and Gulf Oil Company's motion and the amendment thereto to dismiss the bill of complaint and dismissing the bill.

6. That the United States Circuit Court of Appeals erred in not sustaining appellant's third assignment of error on the appeal from the District Court, which assignment is as follows, to-wit: (3) That the Court erred in rendering and entering its final order of December 16, 1922, dismissing the bill of complaint in this action, the said order being contrary to law.

7. That the United States Circuit Court of Appeals erred in not sustaining appellant's fourth assignment of error on the appeal from the District Court, which assignment is as follows, to-wit: (4) That the court erred in rendering judgment upon the pleadings dismissing the bill of complaint in this action.

8. That the United States Circuit Court of Appeals erred in not sustaining appellant's fifth assignment of error on the appeal from the District Court, which assignment is as follows, to-wit: (5) That the final order dismissing the bill

of complaint herein is erroneous in holding that the bill of complaint does not state facts sufficient to constitute a cause of action.

9. That the United States Circuit Court of Appeals erred in not sustaining appellant's sixth assignment of error on the appeal from the District Court, which assignment is as follows, to-wit: (6) That the final order dismissing the bill of complaint is erroneous in holding that the cause of action set forth in the bill of complaint is barred by the statute of limitations of the State of Wyoming.

71 10. That the United States Circuit Court of Appeals erred in not sustaining appellant's seventh assignment of error on the appeal from the District Court, which assignment is as follows, to-wit: (7) That the final order dismissing the bill of complaint is erroneous in holding that the plaintiff and his grantors had been guilty of laches in not sooner asserting their right and title to the property in controversy.

11. That the United States Circuit Court of Appeals erred in not sustaining appellant's ninth assignment of error on the appeal from the District Court, which assignment is as follows, to-wit: (9) That the final order dismissing the bill of complaint is erroneous in holding that there has been a final and binding adjudication of the matters and things set forth in the bill of complaint herein by the Secretary of the Interior of the United States, against all rights claimed by the plaintiff.

12. That the United States Circuit Court of Appeals erred in not sustaining appellant's tenth assignment of error on the appeal from the District Court, which assignment is as follows, to-wit: (10) That the final order dismissing the bill of complaint in this action is erroneous in holding that the United States of America is an indispensable party defendant to the equitable and complete determination of the cause of action set forth in the bill of complaint.

Wherefore, appellant prays that the said judgment of the Circuit Court of Appeals rendered and entered herein on March 28, 1925, affirming the order of the lower court, and the said final order of the United States District Court
72 for the District of Wyoming dismissing the bill of complaint herein, may be reversed, and this cause remanded with instructions to proceed in accordance with law.

R. P. STEWART,
J. M. HODGSON,
Attorneys for Appellant.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Jun. 13, 1925.

(Order Allowing Appeal to Supreme Court, U. S.)

This 13 day of June, A. D. 1925, came the appellant, by his solicitor, and filed herein and presented to the Court his petition praying for the allowance of an appeal, an assignment of errors intended to be urged by him, praying, also, that a transcript of the record and proceedings and papers upon which the judgment was rendered herein, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the appeal, and it is further ordered that the bond for costs, to be given conditioned according to law, is hereby fixed at the sum of Five Hundred Dollars.

Done at St. Paul, Minnesota, this 13 day of June, 1925.

KIMBROUGH STONE,
Judge of United States Circuit Court of Appeals for the Eighth Circuit.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Jun. 13, 1925.

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73 (Bond on Appeal to Supreme Court, U. S.)

Know All Men By These Presents, That we, James M. Hodgson, as principal, and the National Surety Company, a corporation organized and existing under the laws of the State of New York, as surety, are held and firmly bound unto the Federal Oil and Development Company, a corporation, and The Mountain and Gulf Oil Company, a corporation, in the full and just sum of Five Hundred Dollars, to be paid to the said Federal Oil and Development Company and The Mountain and Gulf Oil Company, their certain attorneys, successors, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, by these presents. Sealed with our seals and dated this 19th day of June in the year of our Lord one thousand nine hundred and twenty-five.

Whereas, lately, at a term of the United States Circuit Court of Appeals for the Eighth Circuit, sitting at Denver,

Colorado, in a suit depending in said Court, between James M. Hodgson, Appellant, and the Federal Oil and Development Company, a corporation, and The Mountain and Gulf Oil Company, Appellees, a judgment was rendered against the said James M. Hodgson, affirming the order of the lower court dismissing said action and for costs, and the said James M. Hodgson having obtained an appeal to the Supreme Court of the United States to reverse the judgment in the aforesaid suit, and a citation directed to the said Federal Oil and Development Company and The Mountain and Gulf Oil Company, Appellees, citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington on the 13th day of July, 1925, next.

Now, the condition of the above obligation is such, that if the said James M. Hodgson shall prosecute his appeal
74 to effect, and answer and pay all costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

J. M. HODGSON (Seal)

NATIONAL SURETY COMPANY,
By Howard Toncray, (Seal)
Attorney in Fact.

Sealed and delivered
in presence of:

Floyd E. Pendell
Helene Johnsen,
as to Surety.

Approved by:
Kimbrough Stone, Judge.

* * * * *

(A certified copy of the Power of Attorney of the National Surety Company issued to Mr. Howard Toncray, and also affidavit of Mr. Howard Toncray are attached to the original bond.)

(Endorsed): Filed in U. S. Circuit Court of Appeals, Jun. 22, 1925.

(Praecipe for Transcript on Appeal to Supreme Court, U. S.)

The Clerk of this Court is hereby directed to prepare and certify a transcript of the record in the above entitled case

for the use of the Supreme Court of the United States, by including therein the following: the entire record used in the Circuit Court of Appeals on the appeal from the District Court, and including therewith the proceedings in the Circuit Court of Appeals, the judgment, and all the opinions filed in the case by said Court.

Dated at St. Paul, Minnesota, this 13th day of June, 1925.

J. M. HODGSON,
R. P. STEWART,
Solicitors for Appellant.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Jun. 13, 1925.

(Notice of Filing Praecipe and Acceptance of Service.)

To Messrs. Tyson S. Dines, Tyson S. Dines, Jr., Peter H. Holme, and Harold D. Roberts, Solicitors for Appellees:

Place take notice that on the 13th day of June, 1925, the undersigned filed with the Clerk of this Court a praecipe for the record to be transmitted to the Supreme Court of the United States on the appeal taken in the above cause, a copy of which praecipe is herewith served on you.

Dated this 18th day of June, 1925.

R. P. STEWART,
J. M. HODGSON,
Solicitors for Appellant.

Service of the within Notice and a true copy of Praecipe for record is hereby accepted at Denver, Colorado, this 18 day of June, 1925.

TYSON S. DINES,
HAROLD D. ROBERTS,
TYSON DINES, JR.,
PETER H. HOLME,
Solicitors for Appellees.

(Endorsed): Filed in U. S. Circuit Court of Appeals. Jun. 22, 1925.

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76 United States Circuit Court of Appeals Eighth Circuit.

James M. Hodgson, Appellant,
No. 6409. vs. In Equity.
Federal Oil and Development Company, a Corporation, and The Mountain and Gulf Oil Company, a Corporation, Appellees.

Citation on Appeal.

The United States of America—ss.

The United States of America, to the Federal Oil and Development Company and The Mountain and Gulf Oil Company—Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C., on or before the 13 day of July, A. D. 1925, pursuant to an appeal allowed in the above entitled cause, and filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein James M. Hodgson, is appellant, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Kimbrough Stone, Judge of the United States Circuit Court of Appeals for the Eighth Circuit, this 13 day of June, in the year of our Lord one thousand nine hundred and twenty-five.

KIMBROUGH STONE,
Judge of the United States Circuit Court of Appeals.

77 Due and personal service, by copy, of the foregoing Citation on Appeal, is hereby admitted this 18 day of June, 1925.

TYSON S. DINES,
HAROLD D. ROBERTS,
TYSON DINES, JR.,
PETER H. HOLME,
Solicitors for Appellees.

(Endorsed): United States Circuit Court of Appeals, Eighth Circuit. James M. Hodgson, Appellant, vs. Federal Oil & Development Co. and The Mountain & Gulf Oil Co., Ap-

pellees. In Equity. No. 6409. Citation on Appeal to Supreme Court, U. S., and Admission of Service. Filed Jun. 22, 1925, E. E. Koch, Clerk.

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78 (Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the District of Wyoming as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings, including th opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, prepared in accordance with the praecipe of counsel for appellant, in a certain cause in said Circuit Court of Appeals wherein James M. Hodgson was Appellant and the Federal Oil & Development Company, et al., were Appellants, No. 6409, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with admission of service endorsed thereon is hereto attached and herewith returned.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-fifth day of June, A. D. 1925.

(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

In the Supreme Court of the United States

Statement of Points to be Relied upon and Designation by Appellant of Parts of Record to be Printed, with Proof of Service—Filed July 18, 1925

The following is a definite statement of the points on which the appellant in this above entitled case intends to rely on this appeal:

1. That the United States Circuit Court of Appeals erred in rendering and entering its judgment of March 28, 1925, affirming the final order of the District Court of the United States for the District of Wyoming, entered on December 16, 1922, dismissing the bill of complaint in this action, the said judgment being contrary to law.

2. That the judgment of the United States Circuit Court of Appeals for the Eighth Circuit rendered and entered herein on March 28, 1925, is erroneous in holding that the cause of action set forth in the bill of complaint herein is barred by the six months' statute of limiations contained in the Act of Congress of February 25, 1920, known as the Oil Leasing Act, 41 Stat. at L. 437.

3. That the United States Circuit Court of Appeals erred in not finding the issues for the appellant.

4. That the United States Circuit Court of Appeals erred in not sustaining appellant's first assignment of error on the appeal from the District Court, which assignment is as follows, to-wit: (1) That the court erred in sustaining the defendant the Federal Oil and Development Company's motion and the amendment thereto to dismiss the bill of complaint and dismissing the bill.

5. That the United States Circuit Court of Appeals erred in not sustaining appellant's second assignment of error on the appeal from the District Court, which assignment is as follows, to-wit: (2) That the court erred in sustaining the defendant The Mountain and Gulf Oil Company's motion and the amendment thereto to dismiss the bill of complaint and dismissing the bill.

6. That the United States Circuit Court of Appeals erred in not sustaining appellant's third assignment of error on the appeal from the District Court, which assignment is as follows, to-wit: (3) That the Court erred in rendering and entering its final order of December 16, 1922, dismissing the bill of complaint in this action, the said order being contrary to law.

7. That the United States Circuit Court of Appeals erred in not sustaining appellant's fourth assignment of error on the appeal from the District Court, which assignment is as follows, to-wit: (4) That the court erred in rendering judgment upon the pleadings dismissing the bill of complaint in this action.

8. That the United States Circuit Court of Appeals erred in not sustaining appellant's fifth assignment of error on the appeal from the District Court, which assignment is as follows, to-wit: (5) That the final order dismissing the bill of complaint herein is erroneous in holding that the bill of complaint does not state facts sufficient to constitute a cause of action.

9. That the United States Circuit Court of Appeals erred in not sustaining appellant's sixth assignment of error on the appeal from the District Court, which assignment is as follows, to-wit: (6) That the final order dismissing the bill of complaint is erroneous in holding that the cause of action set forth in the bill of complaint is barred by the statute of limitations of the State of Wyoming.

10. That the United States Circuit Court of Appeals erred in not sustaining appellant's seventh assignment of error on the appeal from the District Court, which assignment is as follows, to-wit: (7) That the final order dismissing the bill of complaint is erroneous in holding that the plaintiff and his grantors had been guilty of laches in not sooner asserting their right and title to the property in controversy.

11. That the United States Circuit Court of Appeals erred in not sustaining appellant's ninth assignment of error on the appeal from the District Court, which assignment is as follows, to-wit: (9) That the final order dismissing the bill of complaint is erroneous in holding that there has been a final and binding adjudication of the matters and things set forth in the bill of complaint herein by the Secretary of the Interior of the United States, against all rights claimed by the plaintiff.

12. That the United States Circuit Court of Appeals erred in not sustaining appellant's tenth assignment of error on the appeal from the District Court, which assignment is as follows, to-wit: (10) That the final order dismissing the bill of complaint in this action is erroneous in holding that the United States of America is an indispensable party defendant to the equitable and complete determination of the cause of action set forth in the bill of complaint.

The appellant hereby designates the record to be prepared for the use of the justices of the Supreme Court of the United States, as the parts of the record which appellant thinks necessary for the consideration of the points on which appellant intends to rely on this appeal, the one certified printed copy and twenty-nine uncertified printed copies of the entire record on which this case was tried in the court below and furnished to the Clerk of the Supreme Court by the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Dated at Denver, Colorado, this 14th day of July, 1925.

J. M. Hodgson, Floyd E. Pendell, Counsel for Appellant.

Due and personal service, by copy, of the foregoing Definite Statement of the Points on which Appellant Intends to Rely and of the Parts of the Record which the Appellant Thinks Necessary for the Consideration Thereof, is hereby accepted at Denver, Colorado, this 14th day of July, 1925.

Tyson S. Dine, Peter H. Holme, Tyson Dine, Jr., Harold D. Roberts, Counsel for Appellees.

[File endorsement omitted.]